SHRI C. RAMACHANDRAIAH: But I should support this Bill. Sir. This Bill is needed. But. at the same time, the Government should introduce such provisions as would ensure that the Bill cannot be misused.

Re. Agitation by Fishermen for Implementation of Murari Committee Report

SHRI OSCAR FERNANDES (Karnataka): Sir. before you adjourn the House for lunch, I have a point to raise. Fishermen all over the country are agitating for the implementation of the Murari Committee Report and also about the subsidy on diesel. I think the Government may kindly attend to this grave problem, which is affecting fishermen. Thank you.

SHRI JANARDHANA POOJARY (Karnataka): Sir. I associate myself with him, *(Interruptions).* Thousands of people have come out throughout the country.

SHRI RAJU PARMAR (Gujarat): Sir. I also associate myself with him.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Now. the House stands adjourned for an hour.

The House then adjourned for lunch at two minutes past one of the clock.

The House reassembled after tunch at two minutes past two of the clock.

THE VICE-CHAIRMAN (SHRI RAMA SHANKER KAUSHIK) in the Chair.

SUPPLEMENTARY DEMANDS FOR GRANTS (RAILWAYS) 2002-03

THE MINISTER OF RAILWAYS (SHRI NITISH KUMAR): Sir. I lay on the Table a statement (in English and Hindi) showing the Supplementary Demands for Grants (Railways) for the year 2002-03.

Prevention of Money Laundering Bill, 1999 - (Contd.)

SHRI A. VIJAYA RAGHAVAN (Kerala): Mr. Vice-Chairman, Sir. I thank you for giving me this opportunity to speak on the Prevention of Money Laundering Bill, 1999. First of all, I would like to congratulate the hon. Finance Minister for bringing in this Bill, which is to be passed by this House without any deiay, because this is an important Bill, which is related to the safety of our nation, integrity of this nation; and to some extent, this Bill will protect our country from the inflow of dirty money to the hands of

the anti-national elements as well as its inflow to the political system as such. Sir, this Bill had been passed by the Lok Sabha, and has been thoroughly discussed in the Department-related Standing Committee on Finance as well as in the Select Committee. Sir, one important change has taken place in between. When we had been discussing this Bill in the Standing Committee on Finance and the Select Committee, the attack on the Parliament had not taken place, the ti,h September incident had not taken place. Now, the situation has further changed. We have to pay more attention to the inflow of dirty money to our country, to the political system and to the economy. Sir, what kind of money is coming? This country is facing a threat from terrorists. And that threat is also coming from outside elements who want to destabilise the nation. The Pakistan-Afghanistan belt has become the money-launderers' dreamland. The money launderers and the bankers have been providing funds to militant outfits in the region for a number of years. Money-laundering has largely emanated from the illicit narcotics trade. It is estimated that a kilo of heroin, 40 per cent pure, sells for up to $2,90.000 on the streets of the US, which is enough to buy a Rolls-Royce car. In America, after changing hands a number of times, the retail price for a kilo of cocaine works out to $1,10,000. In Europe, it costs substantially higher. The official estimate of retail drug sales in the US is $60 billion. That means, a large amount of dirty money is emerging. It is becoming increasingly difficult to distinguish between white and black money. Dirty money. Dirty money is being used to sustain the terrorist network. Dirty money is being used to achieve the strategic objectives of the terrorists. In such a situation, we have to have more safeguards for not allowing the inflow of dirty money into our country and have access to any system, economic, social and political. But, Sir, I am very sorry to say that after a lot of discussion in different Committees, we have slightly diluted the original Bill; we have changed the definition itself. The definition in the original Bill was;

"3. Whoever--

acquires, owns, possesses or transfers any proceeds of crime; or

knowingly enters into any transaction which is related to proceeds of crime, either directly or indirectly; or

conceals or aids in the concealment of the proceeds of crime,

commits the offence of money laundering."

This was given in the original Bill. Now, Sir, it is diluted in the present Bill. Here, it is mentioned: "…….connected with the proceeds of crime and projecting it as untainted property. Sir, who will go and project this money as untainted? Who will project black money as black money? Here, under the definition, the culprit has to project this black money as an untainted one. Only fools will do that! None of the culprits will go and project it as untainted money. After going through the deliberations of the Parliamentary Committee, I have noted that the definition of money-laundering has been changed in the Bill. That will protect the money-launderers in the country. So, I oppose the first part, *i.e.* the definition.

Secondly, I refer to sub-clause (ii) relating to the Scheduled Offence.

"The offences specified under Part B of the Schedule if the total value involved, in such offences is thirty lakh rupees or more."

Here, we are discussing that it should be enhanced to Rs.1 crore or Rs.2 crores. This kind of money is coming into our country through the hawala route. Last week, in Kerala, about Rs.3,33 crores came through the hawala route. There was a big hue and cry. This money was used for anti-national purposes. It is now under investigation. Your Ministry is investigating it. Has this amount of Rs.330 crores come as such? No. It came in small components of Rs.15 lakhs,Rs.20 lakhs. 30- lakhs. How is this money coming? A criminal would ensure that the amount is split into smaller components, deposited in different banks and not detected. He will ensure that. This escape route is known as "smurfing". There is a book called "The International Way of Money-Laundering and Practices". There is a mention about this process of splitting large amounts into smaller components in order to avoid the limit and channelise them into money-laundering. If this limit is enhanced, this possibility is more. They would not use the amount in bulk. They would split it, deposit it and channelise it into the economy. Therefore, I will not be in a position to support this Bill, if there any move to further enhance this limit. In fact, my humble request to the Minister is, kindly reduce this amount.

The third point is relating to the powers of survey, search and arrest. In the original Bill, the authorities were given sufficient powers to make inquiries into such issues. Recently, we have the case of the Xerox Corporation. It has been disclosed that its Indian subsidiary, the Modi Xeroxcorp, had been making improper payments titl 2000 to get orders from

Government agencies. In simple language, it means, bribes were paid to the tune of Rs.3-3.5 crores in one single year to get Govemment orders. Did we unearth this irregularity? Has it been done by the investigating agencies in our country? Has any of our officers unearthed this? Only when there was an inquiry abroad, we got the information. What does it mean? In this kind of financial offences or economic offences, normally, our officers are not doing their work properly. They are not doing their work. We inquire into these things here only when we get some information from outside. In the past, only when there was some business rivalry between some business groups, such things were unearthed. Normally, we are getting this kind of information from outside. The information about the Bofors came from outside. The information about the Modi Xerox came from outside. Our officers never did their work to the expected level. I don't know why they have the fear. Whenever this Bill came for introduction, there was an opposition against this Bill from big business people, from ASSOCHAM, FICCI, etc. All of them were opposing this Bill tooth and nail. I don't know the reason. They were projecting that some officers had done something, and that some of them would misuse it. If there is something related to the poor people, immediately, the entire machinery would take action against them. If a poor man takes some toan from a bank, immediately, the entire machinery would go there and take action against him. In the case of economic offenders, normally, there is an escape route prevailing in our system. We take action only when there is some controversy. Normally, we do not take any action. What have we done here? The earlier Bill, clauses 15 to 19, gave sufficient powers to make survey, search and arrest. These powers have been curtailed in this Bill. Now, in clause 16, with regard to powers of survey and search, the powers that were in the original Bitl are not there. I regret to mention that the present change "on the basis of material in his possession* and related issues restrict the authorities from taking effective steps to stop money laundering. This will pave the way for money launderers to go ahead and do whatever anti-social activities they want to do.

On several occasions, the Supreme Court of India has upheld laws relating to economic offences with strict liability, where *mens* rea is not an ingredient. But in this Bill the onus of proving the usage of the proceeds of crime is on the shoulder of the prosecution rather than on the culprit. No burden of proofs put on the offender.

We have the track record of lack of punishment or very minimum punishment in the case of economic offences. That is what I have mentioned. The important change in clause 23 is very dangerous in nature. it is against the standard practice in respect of economic offences that existence of culpable mental state on the part of the accused is presumed and the onus lies on the accused to prove that he had no culpable mental state with respect to the particular act. If the presumption of culpable mental state on the part of the accused which is removed from such economic offences, it would be very difficult to prosecute the money iaunderers. We would not be able to prosecute the money launderers because of this change of onus of proof.

Even after the experiences of growing terrorism all over the world and the involvement of terrorists tn money laundering, the Govemment is in half mind to take stringent actions against the economic offenders.

So far as clause 23 which relates to the presumption of mental state is concerned, if we remove this part related to the presumption of the existence of culpable mental state, it would be extremely impossible to prosecute the money launderers. We have to take note of it.

The Minister has come forward with a comprehensive Bill. We had discussed this Bill in detail. Unfortunately, there exists an escape route. Now the Minister is saying that he wants to save the country from these elements. Unfortunately, this country is facing a threat from external offenders and terrorists. We have so many economic offenders in our country. This Bill should not provide any escape route to the culprits, it should safeguard the interests of the country. The Minister is claiming that he has done a good job and that he is trying to fortify the system. But through this Bill you have opened all the doors and windows and then you will be handing over the locks and keys to the offenders. Still you are claiming that the country is safe! It should not happen. There should be a strict provision. This Bill should not be diluted further. So far as these aspects are concerned, the original things should remain. Thank you.

SHRI PRITHVIRAJ CHAVAN (Maharashtra): Sir, the Prevention of Money Laundering Bill is an important piece of legislation which has been thoroughly scrutinised by the two Committees of Parliament. Some reservations have been expressed by the industry, the business and the Chambers of Commerce. The Bill that is before us has been carefully put together by the Select Committee of this House. As I said, it is an

important legislation and we tend to support it. But we have reservations, grave reservations, and I will try to explain our reservations about certain features, about the general attitude of the Government towards tainted money. The genesis of this legislation, really, is in the 1988 Vienna Convention against Illicit Trade in Narcotic Drugs and Psychotropic Substances which, for the first time, legally defined money-laundering. There have been various U.N. General Assembly Resolutions. The OECD Task Force and even the Commonwealth Finance Ministers, who, met in 1994-95, have all gone into it. As a result of that, the Finance Ministry appointed an Expert Group and the Bill is the result of their findings. Sir. the Expert Committee Report is an important document and I will refer io that in a couple of places. Now, why has this Bill been scrutinised by two Committees of this House? The Committees had to recommend several changes, because there were apprehensions. The major apprehension was that, while we did away with FERA, the famous law against foreign exchange manipulations, it was thought that FERA was being brought back through the backdoor, that all the draconian features of FERA would be brought- back in this legislation, and it was to address these fears that Parliament had to spend -a lot of time on this Bill. The experience of FERA was not very good, It was misused; it led to many prosecutions, but few convictions. The cases were pending for many years. Ultimately, the sunset clause had to be applied; arrests were made; records were confiscated; people were harassed. But in spite of such powers given to the Government, it is reported that black money, out of foreign exchange transactions, particularly, import-export transactions, to the tune of over 100 billion dollars has been stashed away in Swiss banks, and tax saved, And, no big fish has been caught. The official machinery went after only the small fry. There were no truck loads of money seized from foreign trade racketeers or hawala operators or of the money made in defence deals, — the Tehelka tape exposed the kind of corruption that goes on in defence deals — and nobody was punished. But there is a need to crack down on drug trade, which leads to narco-terrorism; need to crack down on money-laundering. It is estimated that the drug trade is the third largest business, after petroleum and foreign exchange, and there are estimates of the drug trade being worth 400 billion dollars, as per a U.N. Report. And the IMF estimates the Gross Criminal Product - GCP is the term used for the volume of money-laundering -- to be about 500 billion dollars, and these are old figures/ Sir, the 4aw-enforcement agencies do need special powers to deal with special crimes. Economic crimes and drug trade are getting more

and more sophisticated; they are getting more and more ingenious, using latest technologies in computers, communications and weapons. But the law that we propose has to strike a balance between the special powers given to the States, with a potential to guard against misuse, and crack down on drug trade, terrorists' funds and money-laundering in general. This has to be done by not allowing the criminals to enjoy the fruits of their crimes, and that is what the Bill is about. But if you go after everybody, bring all sorts of crimes under the ambit of this Bill, then, the focus will be lost. What this House needs to contemplate is whether by bringing in a lot of predicate crimes, th* scheduled crimes, we are not losing the focus from drug trade, narco-terronsm? crimes against the State, etc. Therefore, we have to balance it, without going after too many people and letting the big ones go, or not focussing on the big fish.

Sir, what are our apprehensions? The apprehensions are of two types. There are some general apprehensions about the attitude of the Finance Ministry and the attitude of the Government to this whole business of black money, tainted money and money laundering. Then, there are some general concerns and some particular concerns about the clauses of the Bill.

Sir, I have grave doubt whether this law is being proposed only to fulfil our obligations towards the UN system, the 1988 Vienna Convention --are we dpjng it just because we are a signatory. Will it really be used for its stated purpose, effectively? Past experience does not inspire confidence. What has been the track record? I will give some examples. Generally, Government's attitude to the whole business of tainted money has been piecemeal. First, we started looking into this problem in the 1961 Income-tax Act. Then, we had FERA in 1973.

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):पृथ्वीराज जी, आपके दल के केवल अट्ठाइस मिनट शेष थे । आपको मिलाकर पांच माननीय सदस्य बोलने वाले हैं।

श्री पृथ्वीराज चव्हाण:सर, इस पर चार घंटे हैं। यह बहुत इम्पोर्टेन्ट बिल है।

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):वह तो है लेकिन आपकी कांग्रेस पार्टी के और भी माननीय सदस्य बोलने चाहते हैं।

श्री पृथ्वीराज चव्हाण:थोडा समय लगेगा।

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**): थोड़ा जल्दी कीजिए।

श्री कपिल सिब्बल (**बिहार**):थोड़ा बढा दिजिए।

SHRI PRITHVIRAJ CHAVAN: Sir, I come to the property aspect of black money, about forfeiture and confiscation of property. What were the laws that we had? We had the Smugglers and Foreign Exchange Manipulators {Forfeiture of Property) Act in 1976. It was not well-drafted. It went through a lot of litigation. Only in 1994, after 18 years, the Supreme Court upheld it. The second example is this. We have, specifically, the Narcotic Drugs and Psychotropic Substances Act of 1985. This Act was amended in 1989. Specifically, a chapter, Chapter V, was added to provide for confiscation. So, we have, today, on, the statute book, a law for confiscation of property out of the drug trade. But I come to a graver issue and a much more serious issue. Parliament has given the power to the Government, but the Government is not serious. What more glaring example of this can be than the Benami Transactions (Prohibition) Act of 1988. This ACi provides for confiscation. The CBDT' was to implement it. But, Sir, even after 14 years, the rules have not been notified. The Act has not been implemented. It is lying in the *thanda basta,* because there is no political will. Sir, what does your report say. the report of the expert committee? I will just quote from it. It refers to sections 19, 20 and 21 of the Benami Transactions (Prohibition) Act. It says, "However, the CBDT is of the view that proper implementation of this Act is of great significance because, in India, a large number of assets are held and traded in benami names". It further says. "Therefore, it is felt that this Act may be implemented urgently after curing the lacuna, if any". This is the Benami Transactions Act. Sir, we tend to support the Money- Laundering Bill, if you promise us that the Benami Transactions (Prohibition) Act will be implemented, the rules will be notified, and it will not remain sealed in some cupboard. This is the Act where Parliament has given you the power, but you have no will to implement it.

I come to the clauses of the Bill. Sir, economic offences have been left out. Initially, we had falsification of accounts and other things. But they have been left out, because the ambit was becoming too wide. Now, what is being seen, internationally, is that, accounts are being falsified, profits are being wrongly reported, and so on. I think we may have to look at this clause at a later stage. Hawala racketeers have also been left out. it is not one of the scheduled offences. Even under-invoicing and over-invoicing in foreign trade transactions has been left out. But I think, at this stage, it is good that we have left these things out because, otherwise, the focus would have been lost. We can bring these things later. I also want to find out whether there is duplication between the NDPS Act, which allows

for forfeiture, and the present law. Will there be a clash? Sir, the definition of the offence of money-laundering, which is spelt out in claues 3 and 24, has been redrafted several times because this is the crux of the problem. This is what is going to be challenged in the court. Right now, clause 24 reverses the burden of proof which was on the accused. The culpable state of mind is very crucial. References have been made to it. Again, why is this necessary? Let me come to the report of the expert Committee?

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):आप कृपया समाप्त करें।

श्री पृथ्वीराज चव्हाण:थोड़ा सा, पांच मिनट। Sir, I will refer to the Report. I quote again. The Income-tax Department says, "The experience of the Department is that most of the prosecutions launched in courts tend to fail, in view of the culpable mental state, or *mens rea,* as it is properly called". That is why, this is a crucial area where you needed to define it, and I think, the Committee is to be commended for defining it. Again, a suggestion was made by a colleague from my party that the definition of the Scheduled Crime in Part B limits transactions to Rs.30 lakhs. A suggestion was made that this should be changed to Rs.1 crore, because the value of Rs.30 lakhs today is not much. I tend to support this Bill because, again, we have to strike a balance and go after the realty big criminals, and not clutter the courts with small cases, which lead us nowhere. That is why, I think, you considered making the Part B offences up to a value of Rs.1 crore. Now, Special Courts have been...

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):आप कृपया आसन ग्रहण करें।

श्री पृथ्वीराज चव्हाण: दो मिनट, दो- तीन प्वाइंटस हैं। So far as the Special Courts are concerned, I think their validity will be challenged. The classification has to be crystal clear. But, I think, it is a valid thing. I want to make one more concrete suggestion, and that is abotIt the potential of misuse, the arrest part of it. Now, you have given powers to fairly junior officers, like in FERA, to arrest people on suspicion. Section 19 deals with this subject. I suggest -that arrest should be restricted to only Part A crimes, like the crime of waging war against the State and drug related offences, and arrests should not be there against Part B crimes, because if they commit any offence listed in Part B, they are, anyway, going to be proceeded against, under the normal law. So, I think, this should be considered. Then, there are some minor things like problems about definitions, problems about retention of property etc. Again, there is-.a reference to 90 days, somewhere in clause 5C, and there is a referehc* tc

three months, somewhere in clause 20. This needs to be sorted out. Also, there is somewhere a reference to thirty days and somewhere a reference to one month. This needs to be sorted out.

If you really want to crack down on economic offenders, you need a very specially trained special enforcement agency, which we do not have today. The Economic Offences Wing of the CBI is not enough. I think, even the CBI Act, probably, needs to be looked at. I suggest that we should take this opportunity to create a special enforcement agency, parallel to the CBI, which will look at economic offences only. These are getting very complicated, with information technology. It is not possible for a normal police officer, recruited for third-degree investigation of crimes, to look at these modern crimes.

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):माननीय एन.ज्योति। अब माननीय पृथ्वीराज आसन ग्रहण करें।

श्री पृथ्वीराज चव्हाण: मैं एक मिनट में कन्क्लूड कर रहा हूँ। Sir, economic intelligence needs to be strengthened. It should be precise and firm. In Australia, they have their Financial Intelligence Agency; and, in the US, they have the Financial Crimes Enforcement Network, or something like that. Information-sharing is very important. We must use our clout in the UN system to break the secrecy laws of Switzerland and other tax havens. Now, crackdown on tax havens, which allow Shell companies to create fronts for criminals, is also important. The OECD Task Force is looking at these tax havens. Please participate in that Task Force and see to it that these tax havens are not used to hide these things. Then, I come to a very important point and that is the Double Tax Avoidance Treaty. We have this famous Mauritius route. Most of the FDI is coming through Mauritius. It is being used as a tax haven by criminals to launder their money, and this needs to be looked into. This needs to be done. I think, we also need an assurance from the hon. Minister that he will look at this Mauritius route, plug this loophole and ensure that this Mauritius route will not be used to launder black money.

Sir. we have also to look at the question of extradition treaty. We have got criminals hiding in Pakistan; we have got criminals hiding in the Gulf. We know that they are drug racketeers; traffickers and hawala operators. You cannot bring them to book because you don't have an extradition treaty with them. This is where diplomacy will have to work. We have to counter what you are doing at the request of the international community, force them to...

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):माननीय श्री एन. ज्योति । **....(व्यावधान)**.... अब मैंने बुला लिया है, इसलिए अब आप आसन ग्रहण करें।

SHRI PRITHVIRAJ CHAVAN: Sir, I am .concluding. You also need to train the financial institutions to report properly. Without that, this cannot be done.

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**) : अब आप आसन ग्रहण करें।

SHRI PRITHVIRAJ CHAVAN: Sir, I conclude by saying that the laundered money has a great potential to poison the economies of the third world countries. That is why we support it, with the reservations which I have mentioned.

SHRI N. JOTHI: Hon. Vice-Chairman, Sir, I thank you very much for having permitted me to speak on this Bill. Sir, I seek your permission to speak from here. The reason for speaking from here is, I have to refer to some books. Since I am a new Member,..

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):ठीक है।

SHRI N. JOTHI: Sir, I will try to be brief and finish within the time given to me. If not, kindly give me some more time. My Lord,... Sorry.

SHRI MURLI DEORA: You are in London now!

SHRI N. JOTHI: In courts, we follow this. In a five-minute argument, we say, 'My Lord' twenty times, so that we can get the order. If we minimise the use of this expression, we may not get the order. *Ifnterruptions)*

SHRI MURLI DEORA (Maharashtra): You are in the company of Mr. Sibal. He also says like this.

SHRI N. JOTHI: Yes, exactly. We are accustomed to this. Even while talking privately, i use the word 'My Lord'. Anyway, I am a humble man, I can call anybody 'My Lord'. There is nothing wrong in it.

Sir, this word 'laundering' is an American concept of English. The title of the Bill itself is a foreign concept. We have now brought it to fit it into Indian conditions. There is nothing wrong in trying new things, but at the same time, the word "laundering' may not be a suitable word for a common man to understand. Law should be made in such a way that everybody understands it. Kindly look at the laws made by the British. On reading the title of any Act, one can easily understand it. Only after

Independence, in recent times, we are having different kind of names which are either very lengthy, even running into a paragraph or, at least, into three fines or using certain words which are alien to us. So, I would suggest that as far as the title of the Bill is concerned, instead of the words, 'Money-laundering' -- now it is at the Bill stage •- I would request to the hon. Minister to consider this. We can use the words, 'Money (Prevention of Conversion as Genuine) Act' or 'Tainted Money {Prevention of Conversion as Genuine) Act' so that the real meaning could be conveyed. The words 'laundering' or 'tailoring' are nofunderstood by the common man. This is a humble suggestion from a humble Member. In my opinion, the title of the. Bill needs a little change so that the people can easily understand it. After all, law is made for the people.

Now, coming to the aspect of applicability of the law, certain areas which are covered in this Bill are already covered by other Acts. When it is already covered by other Acts, the procedures are also covered by other Acts. Under such circumstances, how far this latter one will be applied? This question has to be examined by the concerned Ministry. I would suggest this. Sir, the Bill deals with two aspects. One is regarding offences concerning persons, and ihe other one is regarding offences concerning property, movable and immovable. One has the human aspect, and the other has the property aspect. There are different procedures prescribed for that. As far as offences relating to property are concerned, the Bill has provisions for attachment, confiscation and other things; and there is machinery to take care of that. As far as other offences are concerned, provisions have been made in the Bill - how to investigate it, how to lodge a complaint, how to proceed with the case in the special courts to prosecute the offender, and then take the case to its logical end. Sir, so many eminent brains have gone into the Select Committee. My mentor, Mr. Sibal, is here. With whom I have had a long association as a young friend in the courts, I admire him often; that is all I can do; I can't match him. But, at the same time, with my little knowledge of working in this particular line of cases, I fdel, a small error has crept in. After all, the Select Committee can't go beyond the Bill given to them.

Sir, if you look into the offence, a very important mistake committed, which is to be looked into is—it says, "The authorities are prescribed under section 48-Director, Assistant Director, and so many people—who will prosecute the offender." It takes a separate procedure under the Cr.P.C. called 'private forum', that is under sections 200 to 204;

no charge-sheet, and all that. It is called a complaint by a public servant under section 200 of the Cr.P.C. there is a separate procedure.' Suddenly, in certain provisions-I will come to it shortly—the word charge-sheet is used. Section 173 Cr.P.C. is used. Section 173 will apply where the police investigate and make the final report. That is totally a different procedure.

Sir, we must take a little care, because, we, Parliamentarians, pass the Bills and send to the public. They should not criticise us and the courts should not comment on that. To such an extent it must be perfect. It is just a caution only. I am not saying that I am an intelligent man and I found it out. I am only placing these facts for your consideration.

Sir, regarding attachments, I see no flaw in it, excepting overlapping of authorities on some enactments. As far as the prosecution of offences is concerned, there is definitely a confusion; especially, after having prescribed the authorities-Directors, Assistant Directors, etc.- you also equally say, "a final report under section 173." That means, police chargesheet. If that is so, which is the police authority that is going to file chargesheet in this case? Who will investigate under this Bill? is it DSP, or inspector or sub-inspector? At what levei and where? Nothing is mentioned. This Bill is not clarifying anything on this point. A Bill should be complete. A Bill should not give room for so many doubts; a Bill can give some guidelines. But a Bill can't be in complete darkness.

In this aspect, prosecution of a person, you speak of section 200. by a public servant. There can't be this confusion. Suddenly, you talk of section 173. A lawyer, like me. will immediately get a stay on this matter.' I caution you now itself. Please look into this aspect. I want you to pay attention to this.

Under this Bill, both are possible, A private complaint by a public servant is possible, and the police also can file a chargesheet. To my knowledge, it is nowhere mentioned in any law of the country. Sir, there is a possibility, because, next to child birth in our country, what we get more is law. In every State Legislature and Parliament, we make a number of laws, So, there may be an overlap; kindly consider this.

Secondly, regarding the applicability of this Bill, in the Schedule of offences given herein, paragraph 1 deals with offences relating to Indian Penal Code. Paragraph 2 deals with narcotics. As Mr. Prithviraj has pointed, for narcotics, there is already a provision for confiscation, attachment, etc. So also, in paragraph 5 of part (b) of Prevention of Corruption Act, it is

mentioned. The Prevention of Corruption Act also has got its own procedure of interim attachment and final confiscation once the offender is penalised. So, what are you going to do again with the same offence here? It will offend the Constitutional provisions of double jeopardy. It will offend the provisions of section 26 of General Clauses Act. You can't punish a man twice for the same offence. So, if you invoke the Prevention of Corruption Act, the classified offences, section 8, 9 and 10, there is already a provision by way of section 5, sub-clause 6 of the Prevention of Corruption Act, so as to make interim attachments by special courts and to make confiscations, finally if he is found guilty.

The same is the provision available under the Criminal Law Amendment Ordinance, 1944, to make interim attachments. Where is the question of the same procedure to be followed here under this Bill, by bringing it under clause 5? It is an overlapping issue. Kindly consider these aspects, because the law prohibits that it can't be dealt with under two Acts. If there are two Acts, you can choose only one. If the Prevention of Corruption Act can deal with it, and NDPS Act can deal with it. then why should you include these offences under this Schedule at all? I am a bit amazed. This is an area where attention should be paid.

Sir, Prevention of Corruption Act is a self-contained code and no external aid is required. There are already enough provisions to take care of property purchased with the tainted money. Sir, I see another problem here. If a person is prosecuted, under the NDPS Act or the Prevention of Corruption Act, he gets acquittal. Will you proceed against him under the present Bill? The Schedule provides for that. But the general law does not. So,- let us avoid clashes among the Acts. We can have clashes among parlies here, but not among laws. Let us be a little careful on that. Problem arises if parallel proceedings are permitted against a person. This is another aspect to be looked into. If in one he gets the acquittal, can this Act be invoked? *(Time-bell)* Please give me two minutes. It can't be under the general law. Even if it is invoked, it can be stayed; it is a different issue. Why do you trouble a citizen? That is the question. So, we must be a little careful in making laws. Section 26 of the General Act clearly says that one can choose only one Act. As far as the applicability is concerned, you should make it clear when it will be applicable, and at what stages would it be applicable. This needs to be looked into.

Sir. coming to sub-section (y) of section 2 says, "Schedule 'A' offences means an offence specified in the Schedule.* Schedule B says,

above Rs. 30 lakhs. "This Act will apply in respect of matters relating to Rs.30 lakhs and above." Sir. I say that the limit can be little increased, from Rs.30 to 50 lakhs. Rs.50 lakhs can be the starting point, for the application of the Act; and Rs.30 lakhs is too small a amount" under the present times.

Another suggestion is, under section 8, sub-clause 15. the adjudicating authority is supposed to consider natural justice, that is the suggestion given by the Select Committee. I am thankful to the Select Committee for having shown their wisdom. I add two more to it. Apart from natural justice, we must have the principles of equity and good conscience. Mere natural justice is not sufficient. Apart from the natural justice, the principles of equity and good conscience are also to be looked into this matter. That also should be added.

One more suggestion. Under section 8{5), once a person is acquitted, the attachment ceases to be effective. That is how it is stated. Sir, a small suggestion here. The trial court accused, the Department is entitled to prefer an appeal against acquittal. What happens to the attachment? So, we must have an amendment or a clarification here, once an appeal is preferred, the attachment shall continue. There shall not be a ceasing effect of acquittal, especially when an appeal is preferred before the High Court. Because, appeal can be preferred only in the High Court. Once the appeal is preferred, the attachment shall continue. But the Act is silent on that. We should bridge this gap.

Sir, regarding clause 59. with respect to special court, again the problem of section 173 comes. I would like to request the hon. Minster to kindly look into it. The authorities under section 48 can prosecute a person. Clause 44(1) (b) as well as clause 18 proviso 8(b) clearly and suddenly say. 'police report'. I am repeating it again and again because I feel there is something to be looked into. Nowhere in the Bill it is stated both private forum is permitted and criminal prosecution by police is permitted. Nowhere it says that. How it has crept into it. I do not know. Kindly look into it and clarify. Then I come to sanction. We have said so much about tainted money being converted into untainted money. The authorities have to be very careful to see that the economy is put in proper shape and the society is brought into proper shape. Are the authorities ready to discharge their duties? Let us see the evasiveness that has been put in clause 64. itself. Clause 64 deals with sanction. Before prosecuting a person, sanction is required under this Act and the time given for this purpose is 90 days before which the Central Government should act. Otherwise, they say if

the sanction is not given within 90 days, it is a deemed sanctioned. Why, Sir? Are authorities not there to look into the chargesheet and look into the position and give sanction? Why this deemed sanction? Sir, sanction means application of mind of the authorities. Why do you avoid it on that account? Instead of a deemed sanction, their sanction must be made a must because then only unnecessary prosecution can be stalled at the initial stage itself. Therefore, I request the hon. Minister that instead of deemed sanction, the grant of sanction should be a must before proceeding in the matter. There is no question of a deemed sanction. Sir. finally, I have to submit one more point. I know the Chair is a little unhappy with me. Sir, I would like to add certain other offences which are very notorious in our country, especially in our part of the country. These offences should be brought under this Act. These offences are cheating under section 420. misappropriation under sections 406 and 409. Then cheating in respect of chit funds should also be brought within the purview of this Act. We have seen many chit funds like Sudarshan Funds recently in Tamil Nadu which are being run by some big people. They have gone disarray. So many people have been cheated. Sir, then comes the money scheme in which they say, 'you deposit money, we will give you 36 per cent interest.' Nearly Rs,2000 crores have been swindled by some 70 people in Tamil Nadu recently. Those offences can also be brought under the purview of this Bill. This is what I humbly request. Above all, I would like to have a word from the hon. Minister. Sir, I would like to know whether this Bill will be applicable to all the citizens of this country or only to some selected people because recently some people and even one or two Members here on the floor of the House have said about the misuse. They quoted the example of the POTA. Sir, nothing is misused. If an Act is there, its provisions, its ingredients are applicable to offences irrespective of the status of the offender whether he is a Member of Parliament or a Minister or whoever he may be or whatever high position he may be holding. Everybody is equal before law. Sir, article 14 of the Constitution deals with equality. *...(Interruptions)..* It applies to everybody. Where is the question of misuse? When an Act says that these are the ingredients of an offence and a State Government proceeds against the offender, some people call it a misuse. That is not a misuse. It is only a misunderstanding on their part. I will clarify it. It is not a misuse at all. If a person thinks that he is a big man and can violate law, can do anything on earth because he is close to certain quarters, it does not mean *....(Interruptions)..* The State Government has to implement the law. *...(Interruptions)..* We have to implement the law

which has been enacted by the Central Government. They should not say anything against us on this issue. ...*(Time-bell)* I am concluding. Tomorrow when this Act is implemented, maybe, one of the Members of Parliament is caught under this Act, if you say that the Members of Parliament should be exempted, this Member is exempted, that Member is exempted and the authorities should go away, please tell us. My submission is that nobody can be above law. With these words, I welcome this Bill with the request that the suggestions and cautions which I have given may be considered before the Bill comes into operation. Thank you.

THE VICE-CHAIRMAN (SHRI RAMA SHANKER KAUSHIK): Shri Ram Gopal Yadav.

प्रो. रामगोपाल यादव (**उत्तर प्रदेश**):महोदय, इस विधेयक में ....(**व्यावधान**).....

SHRI C.P. THIRUNAVUKKARASU (Pondicherry): Sir, now, it is my turn. Next to Mr. Jothi, my turn will come.

उपसभाध्यक्ष:आपने सिब्बल साहब को अपना समय दिया है।

SHRI C.P. THIRUNAVUKKARASU: Nobody has taken permission from me. I am entitled to speak after Mr. Jothi...*{Interruptions)...*Nobody has asked me about that. After Jothi, it is me...*{Interruptions)..*

प्रो. रामगोपाल यादव:महोदय, यह विधेयक जब राज्यसभा में लाया गया था, उस समय इसमें बहुत सी कमियां थीं। जिस दिन इस विधेयक को यहां इंट्रोड्यूस किया जाना था, मुझे याद है कि मैंने तत्कालीन वित्त मंत्री श्री सिन्हा साहब से इस बारे मे कहा था और उसके बाद यह सेलेक्ट कमेटी को चला गया था। अब यह विधेयक सेलेक्ट कमेटी से दोबारा इस हाऊस में आया है। इस विधेयक के बारे में जो बहुत सी आकांक्षाएं ऐसे हैं, जिनके बारे में आशंकाएं हैं कि उनका दुरुपयोग हो सकता है।

महोदय, इतिहास इस बात का साक्षी है कि जब- जब लोगों ने इस तरह की आशंकाएं व्यक्त कीं कि इन प्रावधानों का दुरुपयोग होगा, तब-तब आगे चलकर उनका दुरुपयोग हुआ है और वे आशंकाएं सत्य साबित हुई हैं। महोदय, हमारे यहां एक कानून बना था और वह आज भी सारे देश में लागू है- दहेज हत्या से संबधित कानून। उस कानून में burden of proof ऐक्यूज्ड व्यक्ति पर रखा गया था। उसका कितना दुरुपयोग हो रहा है, इसकी शायद आप कल्पना नही कर सकते क्योंकि आम लोग दिल्ली तक या बड़े मंत्रियों तक नही पहुंच पाते। चूंकि हम लोग जनता के बीच में रहते हैं, इसलिए हम जानते हैं कि इसका कितना दुरुपयोग होता है। कोई ऐसा मामला नही होता है जिसमें कुछ लड़कियां और महिलाएं झूठी न फ़ंसा दी जाएं और रपट करने वाला केवल दर्ज करा देता है और मुक्ति पा जाता है। महोदय, 90 फ़ीसदी महिलाएं और लड़कियां ऐसे केसेज मे बाद में छूट जाती हैं लेकिन वे अनावश्यक रुप से जेल मे रहती हैं सिर्फ़ इसी प्रोविजन के कारण कि मुकदमा जब दायर हो जाएगा तो अपने आपको निर्दोष साबित करने का दायित्व ऐक्यूज्ड पर होगा।

3.00 P.M.

महोदय, इस बिल में भी सबसे ज्यादा आपत्तिजनक बात यही है। इस बिल की जो धारा 24 है, उसमें यह प्रावधान है कि जब कोई व्यक्ति धारा 3 के अधीन अपराध कार्य करने का अभियुक्त हो तो यह साबित करने का भार कि वह निष्कलंक है, अभियुक्त पर होगा। जब अभियुक्त पर होगा तो इसका दुरुपयोग इस सेंस में होगा कि कभी भी किसी व्यक्ति के खिलाफ़ कार्यवाही होगी और जो करने वाला होगा, वह इससे मुक्त रहेगा। इससे अनावश्यक रुप से लोगों को परेशान किया जा सकता है।

हालांकि आपने धारा 62 और 63 में यह प्रोविजन किया है कि इस अधिनियम या इसके अधीन बनाए गए किन्हीं नियमों के अधीन शक्तियों का प्रयोग करने वाला कोई अधिकारी उल्लेखगत कारणों के बिना किसी भवन या स्थान की तलाशी लेता है या किसी व्यक्ति को निरुद्ध करता है या उसकी तलाशी लेता है या किसी व्यक्ति को निरुद्ध करता है या उसकी तलाशी लेता है या उसे गिरफ़्तार करता है या जान – बूझकर विद्वेषपूर्वक मिथ्या सूचना देता है तो उसके लिए 2 वर्ष की सजा दी जा सकती है। यह आपने जरुर किया है। आप कहेंगे कि यह प्रोविजन हैं, इसलिए गलत तरीके से फ़ंसाने की कोई गुंजाइश नही है। लेकिन आपने धारा 62 और 63 में जो प्रोविजन किया है, वह एक तरिके से धारा 64 के जरिए हटा दिया गया है।

महोदय, हम सब जानते हैं कि जब संविधान सभा में मौलिक अधिकारों पर चर्चा चल रही थी तो अनुच्छेद 14 से लेकर 22 तक सभी अनुच्छेदों पर चर्चा हुई। उनमें सबसे महत्वपूर्ण अनुच्छेद 21 और 22 हैं, इसे कपिल सिब्बल साहब बहुत अच्छी तरह जानते हैं और अनुच्छेद 22 के सब – सैक्शन 4 से प्रिवेंटिव डिटेंशन की व्यवस्था कर दी गई।

हमारे तमाम फ़ाउंडर फ़ादर्स ने कहा था कि एक हाथ से मौलिक अधिकार दिए और दूसरे से छीन लिए। जिसमें जीवन का अधिकार दिया गया हो तो उसी में व्यक्ति को बिना बताए जेल में डालने का प्रोविजन कर दिया गया। तो एक हाथ से आपने दिया कि जो गलत काम करेगा, जो अनावश्यक रुप से ह्रस करेगा उसको दो साल तक की सजा हो सकती है। लेकिन धारा- 64 में यह व्यवस्था कर दी कि जब तक इसकी अनुमति केन्द्र सरकार का अधिकारी नही देगा तब तक उसके खिलाफ़ कार्रवाई नही हो सकती । कितने मामलों में अनुमति दी जाती है और कौन अनुमति लेने जाएगा और कौन अनुमति देगा? मान्यवर, जो अनुच्छेद 64 है इसमें जो प्रोविजन आपने लगा दिया कि धारा 62-63 के तहत कोई न्यायालय धारा – 62 या 63 की उपधारा-1 के अधीन किसी अपराध का संज्ञान केन्द्रीय सरकार की पूर्व मंजूरी से ही करेगा अन्यथा नहीं। जब मंजूरी कम्पलसरी करदी तो किसी भी ह्रस करने वाले अधिकारों के खिलाफ़ कार्रवाई होना संभव नही है। यह मेरा एप्रहेंसन है। इसमें अगर आप कुछ सुधार कर सकते है तो करने की कोशिश कीजिए। दूसरे अनुच्छेद -45 में जो बेल का प्रोविजन है। क्लॉज -45 के "ख" का दूसरा देखिए। जहां लोक अभियोजना का विरोध करता है वहां न्यायालय का यह समाधान नहीं हो जाता है कि यह विश्वास करने के लिए समुचित आधार हो ऐसे अपराध का दोषी नही है। तो जब न्यायालय बेल के ही स्तर पर यह संतुष्ट हो जाएगी कि यह मामला झूठा है, यह छूट जाएगा तो तभी बेल देगा। तो इस प्रकार बेल का कोई मतलब ही नहीं रह जाता है। फ़िर बेल का क्या अर्थ है। फ़िर तो जब केस एक – आध महीने चलेगा उसके बाद वह छूट जाएगा और वह अपने आप जेल से बाहर हो जाएगा। इसका दूसरा मतलब यह हुआ कि वह बेल तब देगा

जब जज या प्राधिकरण का अधिकारी जो मुकदमा सुन रहा है उसको यह सुनिश्चित हो जाएगा कि प्राइमा – फ़ेसाइ यह निर्दोष है। बेल का प्रोविजन सामान्य तौर पर ऐसा होता है कि व्यक्ति को बेल दे दी जाए और वह व्यक्ति तारीख पर आता रहे और न्यायायिक प्रक्रिया में कोई बाधा न डाले। अगर आप पहले ही मानकर चल दें कि आप दोषी हैं तो बेल नही दी जाएगी। यह जो अनुच्छेद -45 है इसमें भी मुझे कुछ आशंका है। एक जो तलाशी की बात है इसमें कहीं प्रोविजन नहीं हैं कि तलाशी के वक्त जिसकी तलाशी ली जा रही है वह अपने वकील या किसी अन्य व्यक्ति को रख सकता हो। लेकिन यह व्यवस्था होनी चाहिए। हम लोग रोज देखते हैम कि किस तरह से तलाशी होती है, क्या पाया जाता है और क्या दिखाया जाता है और क्या पाया जाता है और क्या नही दिखाया जाता है। तो यह अधिकार होना चाहिए कि जिसके यहां तलाशी हो तो तलाशी के समय वह अपने वकील को बुला सके। प्रूफ़ ऑफ़ बर्डन और तलाशी के वक्त वकील को साथ रख सके, बेल के प्रोविजन में जो शुरु से ही कर दिया गया और जो धारा – 62, 63 में प्रोविजन है कि यही तो कहा जाएगा कि ऐसा कानून बना दिया कि किसी को ह्रस नही करेंगे। दो साल की व्यवस्था है दंडित करने की। दंडित एक भी नही होगा,झूठे मामले में लोग फ़ंसेंगे, दंडित कोई नही होगा और राजनितिक विद्वेष से भी फ़ंसेंगे। लेकिन राजनीतिक विद्वेष से लोग फ़ंस रहे हैं और धाराएं लग रही हैं। जब खुद फ़ंसते हैं तो बुरा मानते हैं और दूसरों को फ़ंसाते हैं तो जस्टिफ़ाइ करते हैं। यह इस देश में हो रहा है। माननीय मंत्री जी, जो सम्भव हो सके वह जवाब दें और आश्वासन दे दें कि इसका दुरुपयोग नहीं होगा। इसी के साथ मैं इस विधेयक का समर्थन करता हूँ। धन्यवाद।

SHRI KAPIL SIBAL: Mr. Chairman, Sir, I consider it a privilege to participate in the discussion of the Prevention of Money Laundering Bill.

At the outset, I want to make two general points. The first point is: there was a commitment by us to the international community that we will deal with the issue of money-laundering through legislation. And as you are aware, the United Nations General Assembly Resolution was passed as far back as 23^{d} February. 1990, and now we are in the year 2002. What worries me is that Bills of such significance, of such importance should not take 12 long years to be initiated and passed in the Parliament. Money-laundering is a matter, is an issue, which affects the sovereignty and integrity of nations. It is an issue which affects not only our financial system, but the international financial systems also. I think this problem should be dealt with expeditiously, and the Government should not take 12 years to deal with such problems. That is the first general point I wish to make.

The second point that I wish to make is this. This is a very important point. This Bill was introduced or a Bill of this nature was introduced in Parliament, for the first time, in 1998. Unfortunately, the matter was referred to the Standing Committee, and then, ultimately, when the Bill was sought to be passed, the Lok Sabha was dissolved. It was reintroduced in 1999. It was passed in the Lok Sabha and then, it came to

the Rajya Sabha. We thought that the Bill was totally inadequate and, therefore, a Select Committee was set up. We gave our report -- this is very important, and that is the second general point which I wish to make --on 20^{m} July, 2000. The Select Committee gave a unanimous report on 20^{m} July, 2000, itself, and we are two years down the line and the Bill is being introduced today. Now, the Government should explain and must explain it. If there is an international commitment and the Select Committee gave a unanimous report two years ago, why is it that this Government waited for two long years to bring this Bill to Rajya Sabha? This is something the Government must explain. Well, these are the two general points I wanted to make before going into the broader issues of the Bill itself.

One thing that hon. Members, perhaps, should be explained is this. Sir, this particular Bill deals with laundering money, that is, when tainted money comes into the financial system and is claimed to be untainted. Then, to get at that money, this Bill makes the offence of tainted money being claimed, as untainted. It makes no other substantive offence. Let us be clear on that. The substantive offences are in the Schedule. And, that is why, these are called Scheduled Offences. And those offences relate to offences under the Penal Code, that is, waging war against the Government of India. They relate to offences under the Psychotropic Substances Act. certain offences in the Penal Code, certain offences under the Arms Act. offences under the Wild Life Protection Act, certain offences under the Immoral Traffic Prevention Act and offences under the Prevention of Corruption Act. So. let us be clear on this. When there is a substantive prosecution under each of these offences, as are set out as Scheduled Offences, then only will this Act apply, otherwise, the Act will not apply because if you have not committed an offence under, the Prevention of Corruption Act or under the Psychotropic Substances Act, the question of tainted money coming in does not arise. So, there is not going to be any parallel prosecution under two separate Acts. The prosecution will be along with the prosecution under the substantive offence. So. that is one point that must be made clear.

The second point is this. Though I am part of the Select Committee and there is a unanimous recommendation also, what worries me here is this. What we wanted to tackle on the basis of our commitment to the international community was money-laundering, but what we have ultimately tried to tackle are offences far broader than just money laundering. And, we as Members of Parliament seem to have a death-wish,

because we proclaim to the rest of the world that, look, we are not afraid of passing such laws in Parliament because we do not want to be seen in public as opposing such laws, but, in our hearts, we know that these very laws are going to be used against us. This is our hypocracy. I think we must accept this. Between ourselves, we are hypocritical enough to say that this is not the kind of law that should be passed because it is going to be used against us. but, outside, in the world, we say, see, how wonderful we are, We are passing these laws. I think it is time for us not to be so hypocritical. It is not as if the entire political establishment in this country is corrupt. We are not less corrupt than anybody else outside Parliament. We are not being awarded some medal for corruption. The fact is, we are part of the society, and we are as corrupt as anybody else. Therefore, we must be treated tike anybody else. However, while passing these legislations, we give ourselves some special treatment, as a result, we ourselves get into trouble. I wiil give you a smaf! example, and I would like the hon. Minister to think about it for the future. We will pass this Bill. Sir, as you know, under the Prevention of Corruption Act, the Supreme Court has declared that a Member of Parliament is a public servant. In this connection, I would like to quote section 7 of the Prevention of Corruption Act, and I would like the hon. Minister to take note of it. Section 7 of the Act says, "Any public servant who accepts remuneration other than legal remuneration commits an offence." And the term 'legal remuneration' is, in fact, defined under section 7(c) of the Prevention of Corruption Act, and I will read it out. "The words 'legal remuneration' are not restricted to remuneration which a public servant can lawfully demand, but include all remunerations which is permitted by the Government or the organisation which he serves to accept." So, the word 'legal remuneration' for the purposes of the Prevention of Corruption Act is any remuneration which is permitted by the Government or the organisation which he serves to accept. Now, I believe, Parliament is neither Govemment nor an organisation, but, however, let me accept that because Members of Parliament are public servants. Let me accept that we are covered by section 7, because the Supreme Court says that we are. So, what is our legal remuneration? Our remuneration is only that which we get from Parliament. That is the legal remuneration. And, anything else other than the legal remuneration that we have in our hands is covered by the Prevention of Corruption Act. So. any money that we have other than legal remuneration, i.e. over and above our salaries, is tainted money. If I am a lawyer, I get some money other than the legal remuneration, and I duly file my tax returns, but the Income-Tax Officer

says, "I do not accept your return", then, immediately, it becomes tainted money in my hand. And, I will be arrested under both, the Prevention of Corruption Act and the Money Laundering Act. The same will happen to a businessman, the same will happen to a Chartered Accountant, the same will happen to a person who practices any other vocation, imagine the dangers that we Members of Parliament are posing ourselves to and, that too, without giving any thought. Now. under the Prevention of Corruption Act, I can get bail, under the normal law. If both these Acts are taken together, then, under section 45, I won't even get bail. This is why when the Government is in Opposition, it opposes such laws, and when Opposition is in Government, it wants such laws, because, ultimately, these very laws are used for certain other purposes, and we have seen it, time and again, that in this country it happens. We have seen the other day as to what is happening in respect of POTA. What is happening in Kashmir? What is happening in certain other parts of the country?

SHRI N. JOTHI: Recently, we have also suffered in Tamil Nadu. *..(Interruptions)..*

SHRI KAPIL SIBAL: We are not discussing Tamil Nadu politics. No, I have raised a larger issue in this House; and I request the Leader of the House to, in fact, look into this matter, and then bring an amendment to ensure that Members of Parliament and also the Members of the Legislatures are not public servants under the Prevention of Corruption Act, so that we are then saved from this kind of suicidal behaviour, because, this happens all the time in our country. Now, Sir, that is one general point that I wanted to make and, I am sure, the hon. Leader of the House will look into this matter. Now, Sir. while coming to some other provisions of this Bill, let me, quickly, deal with a definition. As you know, Sir, when the original Bill was introduced in 1999, the definition clause gave an entirely different definition, which was liable to abuse. But, we had, in fact, brought about a change in that definition. So, now, only persons who are intentionally indulging and collecting tainted money are ones who will be covered by this Bill. But the offence under section is relatable to proceeds of crime, and I would read section 3. It says, "Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering." So, he must deal with proceeds of crime, activity connected with proceeds of crime. What are proceeds of crime is defined,

and that is defined, Sir, in the Bill, and this is how it reads. Proceeds of crime means, "Any property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence or the value of any such property." So, the proceeds of crime are relatabie to scheduled offence, and scheduled offence, in turn, again is defined, means, the schedule to the Act. So, the offence is relatabie to proceeds of crime which, in turn, is relatabie to schedule of the Act and the schedule of the Act makes substantive offences of all those various schedules. So. any proceeds of crime relatabie to those substantive offences will be covered by this Bill. So, the Members of Parliament should have no misgivings. There is a separate offence created here and my learned -colleague, Mr. Jothi, made a point that 'look, there are some references to charge-sheets,' --they are bound to be because, with respect to those substantive offences, charge-sheets are allowed to be filed. So, because under those substantive offences, charge-sheets are allowed to be filed, you have to have a mention of charge-sheets in this Bill because, there is no separate prosecution through a criminal complaint other than through that substantive offence, for which you are being tried. So, there should be no problem on that aspect of the matter. That misgiving should not be there. The other thing is — and that is very important again. *Qua* scheduled offence, there are two categories of offences. The first category, i.e., Schedule Part A, paragraph 1, deals with waging, or attempting to wage war or abetting waging of war, against the Govemment of lndia, and conspiracy to commit offences under section 121 of the Indian Penal Code. And, the other is a category of offences under the Narcotic Drugs and Psychotropic Substances Act. That is all part of Schedule of Part A. For that, there is no monetary limit. If you are waging a war against the Govemment of India, there is no monetary limit, there can't be; that is not relevant. And, also *Qua,* the NDPS Act. But, *qua* all other offences, *le.,* Part B of the Schedule of offences, there is a monetary limit of Rs. 30 lakhs. So, if, for example, there is an offence under the Prevention of Corruption Act, where the total amount involved is less than Rs. 30 lakhs, you can't be prosecuted under this Act. If under the Immoral Traffic Act,-, the amount is less than Rs. 30 lakhs, you can't be prosecuted under this Act. So, the safeguard in the Act is that individual acts of omission and commission under substantive law, if the amount involved is less than Rs. 30 lakhs, it is not triable under this Act, so that only racketeers, only persons who deal in huge amounts of monies are people who are liable to be prosecuted. Now, some Members have suggested that this amount from Rs. 30 lakhs should be, in fact, raised to

Rs. 1 crore. I do not think that that is an un-reasonable suggestion because there is a worry, and the worry is that when the Inspector or anybody else is going to get you in, he is going to make out as if the offence involves crores of rupees, as you see everyday in the newspapers. Therefore, he will try to get over the threshold limit of Rs.30 lakhs. That is something which has to be avoided, I am sure the Hon. Minister will look into this aspect of the matter.

The other thing that I want to mention is that this Act, as it originally stood, has no provision of the kind of adjucating authority, which was to be set up. The 1999 Act did not have this provision. We, in fact, made sure that the adjucating authority consists of District Judges or persons, who are qualified. So, a whole new section was added. It was again to provide safeguards.

Similarly, with respect to attachment and arrests, for the first time in any legislation, we have provided that any act of attachment, arrest, or confiscation, reasons in writing have to be given by the authority. You name any provision of any court in India where reasons are required to be given in writing before the arrest or at the time of attachment. This is the only piece of legislation where we have done this. We have tried to civilise an uncivilised piece of legislation which perhaps is necessary. But, we cannot completely civilise it, because we are dealing with the uncivilised people, who indulge in this kind of offences. So, there must be a law. But, the ultimate efficacy of the law lies in the integrity with which it is implemented. It is the Government's duty to ensure that it is implemented with that level of integrity. Remember, Governments are never permanent like men. This Government will be in opposition some other day. So, if you allow subordinate officers to misuse these laws, as has been done in the past, it will boomerang on you one day. You know how the FERA was misused, how laws relating to customs and excise were misused and what kind of people were involved.

Having said on one more thing. I am really done. We must ensure that the bureaucrats who misuse these laws are prosecuted. We find that the bureaucrats in this country feel -- all right, let us lodge a case; even if ultimately the case ends in acquittal, it does not matter. We do it on the basis of false complaints. This happens everyday. Therefore, it is necessary that if it is found at the end of the day that a false information was given or a wrong order of attachment was passed on the basis of false statements, then prosecution against the person concerned should be

launched. We have that provision in Sections 62 and 63. As my learned friend, Mr. Jothi, pointed out, the reason why we have this deeming provision is that the Governments are not inclined to give sanctions to their own people being prosecuted. No Government, no Joint Secretary, will give a sanction, because it involves the Government. That is why we said, if within 90 days you cannot grant sanction, then the sanction for prosecution is deemed to be there. This is the only way to protect ourselves from the misuse of the official machinery. Therefore, I request my learned friend that this is something for your own protection. This is the sanction against the public servant who is misusing the power to deal with. We do not want the Government to give sanction, because they would not give it. If they give it within 90 days, it is alt right, but if they do. not. it is deemed to be a sanction. This is the only protection that the Members of Parliament wiil have. Therefore, I request the hon. Leader of the House not to move an amendment or at least defer the moving of an amendment till the next session.

The last request I have for the hon. Minister is that rules have to be framed under this Act. Even the rules have to be framed very carefully. Ultimately, it is an action against innocent citizens. Therefore, at the time of framing of the rules we must be taken into confidence . You may set up a committee, but please associate some of us with that committee so that we could look into this Act and look into the rules and ensure that rules that are framed are not only consistent with the Act, but, in fact, protect those who are innocent and who will be involved in the Act.

Last of all, a request to the hon. Minister is that it is time that we really decide where we want to go. Let us stop this hypocrisy. Let us have laws, which are focussed dealing with the mischief that we want to remedy. Let us not make these laws into political issues to tell the world how wonderful we are and how ready we are to frame laws against ourselves. Thank you very much,

SHRI C.P. THIRUNAVUKKARASU: Mr. Vice-Chairman, I will straightway come to the points of law that have been raised by my learned friends. It was explained why the report of the police has been mentioned in several clauses of the Bill. Clause 5(1) and clause 17(1) deal with police report. Clause 5(1) deals with attachment of property involved in money-laundering. Clause 17{1) deals with search and seizure of property wherein also a mention of the report under section 173 Cr.P.C. has been made. As pointed out by Mr. Kapil Sibal, the scheduled offences, substantive offences,

are different from the ones dealt with under the Money-Laundering Bill. For any substantive offence, if prosecution has been launched, there will be a charge-sheet as per section 173 of the Cr.P.C. The Proviso under clause 5 (1) of the Money-Laundering Sill says:-

"Provided that no such order of attachment shall be made unless, in relation to an offence under--

Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or....".

There is another provision also. What I submit is, there should be a prosecution under the substantive law. Only after the charge-sheet is filed, the provision of the Money-Laundering Bill can be invoked. By virtue of these provisions, they are entitled to make an attachment of the property as well as search and seizure of other properties contemplated. A substantive offence is one thing and a money-laundering offence is another thing. My worry is this. If a person is charged of a substantive offence, there will be an arrest. There will be a search of the property. There will be an attachment of the property. So, if the same person is arrested again under the provisions of this Bill, he wifi be arrested for the second time. And. there will be a search of the property and there will be an attachment of the property. So, as Mr. Jothi pointed out. there will be two arrests for the same offence. When the charge-sheet is filed under section 173 Cr.P.C, there is an arrest with respect to the substantive offence. After the chargesheet is filed, you are entitled to arrest and also attach the property under clauses 5(1) and 17(1) of this Bill. Therefore. I submit, there will be dual investigations and arrests will be made under both the provisions. With great respect, I submit that this is against the Constitution and cannot be done. This fact may kindly be taken into consideration by the Government.

Then, there is another fact I would like to submit. Under the Prevention of Corruption Act, police officers are entitled to make an investigation- and file a charge-sheet. They are making an arrest and remand of the accused. As per section 13(1) of the Act, if a person is having more property than his income, his property can be seized and it can be attached by virtue of the provisions of the Prevention of Corruption Act and also by virtue of the provisions of the Criminal Law Amendment of 1944. If the same person is arrested under the Money-Laundering Bill, he will be arrested again and all sorts of things can be done against him.

Once there is a provision under the Prevention of Corruption Act for seizure and recovery of the property, there is no necessity for invoking the money-laundering provisions. Under the Prevention of Corruption Act, you are entitled to arrest, seize the property, act against the property. Why should you invoke the Money-Laundering law? It is not at all necessary.

Similarly, other friends have pointed out the Narcotic Drugs and Psychotropic Substances Act provisions. There are specific provisions under the Act. Section 68 has been incorporated which deals with forfeiture of property derived from illicit traffic. If an offence has been committed by a person under the provisions of other Acts, you are entitled to arrest him and attach his property. If this is the position, why should there be a parallel provision under the Prevention of Money Laundering Bill, 1999? You are doing one thing under the Narcotic and Psychotropic Substances Act. and you want to do another thing under the provisions of this Bill. So, it is not necessary to do so. You do it under the provisions of the Narcotic and Psychotropic Substances Act. You need not do it under the provisions of the Prevention of Money Laundering Bill. It is not in consonance with the principles, enunciated in the Constitution of India, and section 26 of the General Clauses Act.

I would tike to make another submission. The property up to Rs. 30 lakhs can be prosecuted under the Prevention of Money Laundering BHI. As far as the Narcotic Drugs and Psychotropic Substances Act andt&e. Prevention of Corruption Act are concerned, the limit of Rs. 30 iakhs has not been stipulated there. You are entitled to prosecute a person for a property worth Rs. 100 crores or worth Rupee one, and confiscate the same. If this is the position obtaining in respect of these Acts, why should you incorporate the provision upto Rs. 30 lakhs in the Prevention of Money Laundering Bill? You cannot go beyond that. If the value of the property is Rs. 30 lakhs, and if you file a chargesheet before the court, a question will arise as to who is competent to evaluate the property. That point has not been spelt out in the Bill. Suppose, I raise an objection before the court that the value of the property is less than Rs. 30 lakhs. So, we make an inquiry into the matter and examine all the witnesses, and ultimately, we come to the conclusion that the value of the property is Rs. 29,99,000 or less than one rupee. In that case, I am entitled to be acquitted at the earliest possible opportunity by the court constituted under the Act, and I am not liable to be prosecuted, as it is. These are some of the lacunae that are there in the Bill.

Finally, I will submit that whatever may be the case, if I have been prosecuted under a substantive law, and I have been acquitted on any technical ground, then, the prosecution is not valid under the law and the search is not in accordance with law. If I have been acquitted on a technical ground under the law itself, all the attachments so made, ceased to be operative. I am entitled to get back that amount immediately. So, if a person has been acquitted on a technical ground, further prosecution, if necessary, can be launched by the authorities concerned, under the Prevention of Money Laundering Bill. The provision of punishment for the economic offences committed under the Essential Commodities Act, the Customs Act, the Income-tax Act, have been totally omitted in this Bill. It should be included here also.

The substantial law provides for one procedure. The other procedure has been contemplated in the Prevention of Money Laundering Bill. In both the cases, a person is arrested, his property is seized, attached and then sold. This also needs consideration. Thank you.

SHRI B.P. APTE (Maharashtra): Thank you Mr. Vice-Chairman, for this opportunity of giving my comments on this Bill. The present Bill, as reported by the Select Committee of this House, in its little redrafting, had the benefit of the vast professional experience of various Members of this House, and therefore, even though the Bill was passed by the Lok Sabha, certain specific amendments have been introduced by the Select Committee, and with those amendments, the Bill is before this House. Sir, the Bill is dealing with the globalisation of this century of the third kind. For the last 20 years, we know of the globalisation of the LPG kind, liberalization, privatisation and globalisation in the economic sphere. Almost, all these years, the world has been experiencing globalization of terrorism. It is almost terrorism incorporated, and this combination of Kalashnikov and Quran is the scourge of the entire world, and now, by this Bill, we are dealing with the globalization of the third " kind. ..... namely, the globalisation of crime which involves millions of dollars every year. Sir, it was found that criminals, criminal syndicates and white-collar criminals funnelled their cash through the offshore shell companies, by using anonymous accounts and by breaking large sums into small deposits, which the trade knows to be a matter of smurfing. So. the money was laundered through smurfing. It was also found that legitimate companies were ruined by companies which were backed by this crooked cash. Therefore, throw it away. It was also found that this kind of money was capable of poisoning

the entire financial system of a small country; maybe, even of a bigger country. Therefore, it was found that that was the situation and the money was being laundered. For understanding this laundering, I find the American definition to be more instructive than our elaborate legal jargon. The Americans say that money-laundering is transfer of funds, earned in an illegal enterprise, to a legitimate business. That is, wasting the money. If this simple definition is understood, we find that this money is the scourge of this world. The United Nations found it, and, therefore, we have a series of international conventions which called upon the member-countries--! am referring to the Political Declaration and Global Programme of Action adopted by the United Nations, as far back as in 1990, on 23rd February, 1990--to develop a mechanism to prevent financial institutions from using, for laundering, the crime-related money. This was followed by our Regional Convention, the United Nations' Conference on Money-laundering, Awareness Raising for South and South-West Asia where, again, it was reiterated that the world should do something about this money-laundering, and in view of this, and in view of the declarations mentioned in the Preamble of the Act, the present Legislation was introduced in 1998.

Sir. somebody mentioned about the word "laundering" and said that in this country a lot of people are living in the villages. When this was mentioned, I was reminded of Raj Kapoor's confrontation with *istri* in his "Shri 420" where he was confused between *istri* and *stree. Istri* means iron. But I think we have come a long way from Raj Kapoor's "Shri 420", and, now, laundering is not such an unknown word. However, I would say—and this also is an aside—that the Hindi translation of the word is very good, it is better use of words. Money-laundering is translated into Hindi to say *dhana shodhan,* and the words are such that they can be used in every language of this country and you may better understand what this laundering means.

SHRI N. JOTHI: If the Hindi word is to be used, then I withdraw my suggestion.

SHRI B.P. APTE: Sir, the enormity of the problem which we are facing can be seen from certain figures. Mr. John Walker is such an international economist who has developed a measuring model; and his conclusion, three years ago, as on 30.11.1998, was that, global money-laundering totalled 2,85 trillion dollars every year. According to the United Nations' report, the annual turnover from global trade in illegal drugs has reached 400 billion dollars, According to the IMF, about 500 billion dollars from frauds, prostitution and other crimes is involved in this. Therefore, this

is rightly called the 'Gross Criminal Product' of the world. This GCP is a menace to the security and financial stability of every country. Therefore, it was necessary to introduce a range of measures. This range of measures ought to include certain predicate offences, that is, the offences giving rise to the proceeds of crime and the involvement of non-banking financial institutions which are used for money-laundering, The provisions should also cover the alternative remittance systems, which we know to be 'hawala'. Probably, the time has come when we should also provide for cyber-laundering. When we look at the enormity of the problem and the necessity for action by every country in the world, we find that the introduction of this Bill is timely and necessary; and if something good is done, it is never too late.

Sir, the Bill was introduced in 1998. It had come to this House about a year ago. Somebody said, "Why was it so late? We are in 2002". The Biit was brought before this House in 2001. But some Members did not permit this House to run. Therefore, it could not be passed in November; it could not be passed in December; and, now, it is almost August. But, better late than never, and the Bill, as moved, has certain salient features. Some of them have been analysed by other Members and I don't want to waste the time of the House on them. But, incidentally, I may mention that a gramatic fear was expressed by everybody that some Member of this House would be guilty under this Bill because of the definition of 'public servant", forgetting that the money which, as a practising lawyer, a Member would earn is not money which he earns in respect of an official act. It is always so. If you read the definition fully, you will comprehend it. If you don't read it fully, you will misunderstand it. This is only a case of misunderstanding. If a lawyer earns money, as a Member of Parliament, and if it is in respect of his official act, then, he may be guilty. Otherwise, he is not. That is elementary, and let us not waste the time of the House on it.

Sir, I want to draw your attention and the attention of the House to certain aspects of this Bill, The definition of 'money-laundering' and 'crime' given in the Bill predicates action in respect of money-laundering, on conviction in respect of certain offences, which give rise to this kind of money. Therefore, there will not be any fishing expedition against anybody, and it will be related to an offence. The most salutary measure here is the provision for adjudication and attachment in respect of property with a taint, in respect of which an offence is being tried. The criminal process or the

process in criminal courts is such that the trial of an offence may not have an immediate end. tn such a situation, if such tainted money is permitted to be in the hands of the accused that money will be used for the trial and for prolonging the trial. In such circumstances, that money has to be attached, has to be taken away from the accused and, in certain cases has to be confiscated, this was very necessary. It is a salutary provision made by this Bill.

The other salutary point is tn respect of the provision of attaching responsibility not only to banking companies but also to certain intermediaries including stockbrokers. I am sure, many of you must have received some representations from the stockbrokers saying, "Please exempt us". I have received one such representation. Since it appears to be a printed thing, it must have been sent to every Member. In fact, if we look at the scams in the last 10 or 12 years in this country, we find that much of the tainted money has gone through the stockbrokers, and, therefore, they are the best intermediaries for the money-launderers. Therefore, inclusion of such intermediaries in institutions held responsible for certain disclosure is excellent. It is a salutary measure which is part of the Bill.

With these words, I commend this Bill to the House. I thank the Finance Minister for having brought this Bill and for bringing something within the purview of law. When laws are made, laws are made for implementation. But laws are flouted. Sometimes, laws are followed in their flouting. But when laws are made, the entire populace is governed by that law. Most of the people are afraid of laws. Most of the people are God fearing. Those who are not afraid of law have to be dealt with by law. To say that because the laws are not properly implemented, let us not make a law, is a logic which is faulty from the beginning. Therefore, let us not apply such a logic to a good legislation. Let us welcome a good legislation and support it. Thank you.

SHRI V.V. RAGHAVAN (Kerala): Sir, prevention of money-laundering is a very urgent necessity in our country today. Ill-gotten wealth and money power are playing havoc in our economy. It has corrupted the entire establishment. It has become a security risk also. So this legislation, though inadequate in some aspects, is a welcome legislation. I support it.

With due respect to Shri Kapil Sibal, I differ with him on the point that MPs and MLAs be brought out of the definition of 'public servant', tt

wiil be very bad if we bring in such an amendment here to protect ourselves. We have to set examples for others. We should not try to protect ourselves from legal proceedings. I hope he would withdraw his suggestion. Nobody would accept his suggestion in this House.

In the neo liberal market economy, a person becoming rich and richer by any means is considered to be a good thing in our society. If a person becomes richer by, say, Rs.50.000 crores, he is worshipped in this society. This thirst for money, for becoming richer, this prevailing social outlook, our law enforcement machinery also must be very careful while dealing with such people.

Sir, the Ministry of Finance has a very important role in activating the law enforcement agencies under the Ministry of Finance. I urge upon the Finance Minister to have a look at it. Mr. Minister, cleanse some of your apparatus and revamp the system. The attitude of the Ministry of Finance can be very well seen from the Report of the Select Committee. While responding to a query from the Committee as to whether all the economic offences would be brought within the ambit of the Bill, the Secretary, Revenue, said that they have reservations about it. The intention of the Ministry is to have a focussed Act covering only a limited number of serious offences. The Select Committee did not accept it. Economic offences are the main source of tainted money. If we don't try to check these economic offences, then, our aim will not be fulfilled. Sir, what is the status of our economy today? Ill-gotten wealth and black money are on the increase. An amount of Rs.62.000 crores, of tax default is there. More than one lakh crores worth of NPA is there to be recovered. The former Finance Minister, more than once, had promised us that he would bring a legislation which would help us in recovering this money. But nothing has been done. So, the immediate need is to recover this money, catch hold of the defaulters and we have to fight those who cheat the exchequer. What is the affairs of our financial institutions nowadays? What are the financial institutions doing about the tainted money? When the UT! scam came up, we warned the Finance Minister to be careful. Now, we are facing the consequences. These financial institutions are the source of this tainted money. The stock exchange agents are playing havoc with our economy. That is why I feel, a penalty of Rs.30 lakhs is not a big amount for them. I am for increasing it to Rs.50 lakhs or Rs.1 crore. Let us begin with some drastic action to put our economy in order. I am not saying this out of any persona! interest, but it is in the interest of our economy as a whole. It is in

the interest of our economy as a whole that we get hold of these economic offenders. With these words, I conclude, and I support this Bill.

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):मैं आपसे यह निवेदन करना चाहता हूँ कि कांग्रेस दल का समय शेष नही बचा है। इसलिए आप कृपया थोड़े समय में ही अपनी बात कहिए।

DR. T. SUBBARAMI REDDY (Andhra Pradesh): Sir, let us be fair and just.

Mr. Vice-Chairman, Sir, psychologically, I feel it is very good that this Bill has been brought. We will be able to enhance our image internationally. But, at the same time, there are a number of problems. There have been objections from the Federation of Indian Chambers of Commerce and Industry, the Confederation of Indian Industry, and so many other people, who are very worried as to what will happen to Indian industry. Perhaps, this may be the reason why you have taken two years. after the Select Committee had scrutinised the Bill, to decide what you should do and how you should do it. Mr. Kapil Sibal asked the hon. Finance Minister why we had taken two years, I presume this may be the reason. There is one more thing. You have to be conscious, cautious and judicious while implementing this Bill. You have to do it very, very carefully. The innocent people should not be punished. I agree with my friend, Mr, Raghavan, and other Leftist friends, that we must punish people who get involved in corruption and who harm our nation. Sir, this Bill takes within its ambit crimes under the Indian Penal Code, the Immoral Traffic Act, Prevention of Corruption Act. the Arms Act, the Narcotic Drugs and Psychotropic Substances Act and so on. This Bill is so powerful that it is like the elder brother of FERA. But people have failed in implementing FERA. About 16,000 cases were filed, but not even forty cases could be proved. So, 16000 people were chargesheeted, arrested and harassed. Ultimately, what was the result? Therefore, it is alarming for everybody. Of course, we all support this Bill. We must punish those who get involved in these crimes. But I want to make a point here. It was said that India was full of corruption. It was a totally unwarranted statement by one of our colleagues. Yes, there is corruption, but everybody here is not corrupt. We are proud of our banks and other institutions, the Govemment Ministries and Department and their employees, who are very honest. We should not demoralise those people. Today, one of the major reasons why we have lack of progress in this country is that we keep on blaming our own people. Therefore, let us not demoralise them. So far as this Bill is concerned, as

4.00 P.M.

Mr. Kapil Sibal has also said, you must have a committee and you should take the advice of a few people. Take a few people, including Mr. Raghavan and other Leftist friends, to advise you on how to implement it.बोलना बहुत आसान है। But, how should it be implemented? For example, suppose some officer is a very sadist and eccentric man. We saw many people like that when FERA was in operation. He puts behind bar some innocent man; there is no bail, and that man cannot go in appeal to the High Court; there is no time limit. The Tribunal has to give judgment. If the tribunal says he is innocent, he can come out. But, till that time, he was being punished. If he is a bachelor, he can't get married. If he is a father, his children can't get married. It is a calamity for that man.

Secondly, you talked about falsification of accounts. How will you prove the falsification of accounts? How are you going to say who is responsible for this? It is very difficult to say. You may give sweeping powers and you may put all these things in the Bill, but how are you going to implement it? It is going to be very dangerous.

The third point that I am going to make is very important. You have taken the provisions of the IPC and the Prevention of Corruption Act. As per sections 8 and 9, if somebody tries to influence a public servant through a corrupt practice, he is punishable under this law. That is okay. If a man is giving money, and there is a proof of it, then he can be punished. If a man is influencing the officials by inviting them for tea and snacks or for a dinner or for a marriage or for some other function, then you can say that he is influencing the officials. This is a vague clause. How do you prove it? It is very dangerous. I don't want to go into the details, India is the biggest democracy in the world. These people can misuse the Act on so many grounds. The misuse is due to political vengeance. If 'x' does not like y, then he tries to finish 'y'. If an innocent man is punished, then he has to prove that he is innocent. This is another vague clause. *(Time-bell)* Sir, even after your ringing the bell, they spoke for ten minutes. I would conclude in one minute. Therefore, I am requesting the hon. Finance Minister to be more cautious and judicious in framing the rules and while implementing the Act. He should see to it that it is done in a fair manner. The most important thing is, if an officer who is empowered to implement this law punishes somebody, and the Tribunal finds that man innocent, then, action should be taken against that man. If such a fear is there, then only there will be some control on those people. How such a provision is missing here, I am not

able to understand. As far as putting a time-limit is concerned, there is no harm in bringing forward an amendment, Mr. Jaswant Singh is from the military; he is a military man; he Is a very disciplined man. As a person, he is very good. Politics is different. We belong to different political parties and believe in different ideologies. He has to be careful. Even if one innocent man is punished, God will punish us. Therefore, a lot of care should be taken in this regard. Let us not have any loopholes in the Bill. If an officer misuses his authority, and it is proved that he has harassed somebody, and somebody's property has been confiscated, then action should be taken against that officer. If somebody is put behind bars, there should be a time-limit of, say, a few months. If the Tribunal takes years in deciding the case, then, this man will be behind bars for years together. This is not correct. So, I want the hon. Minister to clarify all these points, while replying to the debate. On the one side, the Govemment is bringing forward a Bill to control corruption and get an image, at the international level, that the Republic of India is bringing forward a new Bill. At the same time, it should not become like FERA, which has been used to simply harass so many innocent persons who were living respectfully in this country. Till date, nothing has been proved against those persons. They have suffered a lot. Some of them have even died. Some innocent persons; who were giants in the industry, have died due to this harassment. So, such laws should not find place in the statute book.

THE VICE-CHAIRMAN (SHRI RAMA SHANKER KAUSHIK): Shri Eknath Thakur - not present. Shri Balwant Singh Ramoowalia - not present. Shri H.K, Javare Gowda.

SHRI H.K. JAVARE GOWDA (Karnataka): Sir, no doubt, the legislation is required for the prevention of money-laundering. In this country, in every field, we are seeing corruption, drug trafficking and misuse of power. This legislation is required to control these illegal activities and also prevent money-laundering. Mafias are running the various institutions, and they have taken an upper hand in the administration. Even though the percentage of these people is very (ess, their money power is so powerful that it is uncontrollable. While making a Bill, we should keep in mind the interests of a large section of the society. It is also an important aspect to know who are the people who are going to implement this Bill. If they are true to the intention of the legislation, no doubt, the law will be good for containing those aspects. I am going to take up only three points, and I will highlight on them.

Firstly, I would take up the fixation of the value of a property of a kind. What is the yardstick? Even though the definition clause has specifically stated that the date of acquisition of the property has to be taken into consideration, while assessing the value of the property, a specific yardstick is to be introduced on market value on the date of acquisition. Unless a specific clarification is there, it creates a doubt in the minds of the common people. It would require a lot of interpretation. Advantage would be taken to fix a man.

The second point is clause 18, sub-clause 3, which is important to highlight. It relates to search and detention. It may curtail the liberty of a man. If an ordinary man acquires property worth Rs.30 lakhs by known or unknown means, if a Government servant or police is suspicious about the acquisition, then, the person can be retained for 22 hours without informing the court or the magistrate. Again, if the court/ magistrate takes cognisance of the offence, then, he can be detained for another 24 hours. That comes to 46 hours. This is the point to be noted. I would say that you must make a specific amendment to this clause, stating that a person can be detained for only two or three hours; if a *prima facie* case is made out at the time of search, then, he can be detained for 24 hours. This is the point I want to highlight, i draw the attention of the hon. Finance Minister to this and request him to look into the hours of detention. 24 hours for search alone!

As far as clause 45, for bail, is concerned, yes, much discussion is going on on POTA. The application of POTA in a particular case has been interpreted by a number of people in their own way. But, the Home Minister of this country has not interpreted it. not interfered with it, because, it appears, after seeing all the aspects of the matter involved in it and the definition of the sections in it, he has, not at all, opened his lips. May it not happen on this clause. Clause 45 says,

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be cognizable; no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bonds unless the Public Prosecutor has been given an opportunity to oppose the application for such release"

Now, I would like to mention the contradiction here. When a man is produced before the court, at that time, according to the officer who has

detained a person, it is proved *prima facie.* Without finding evidence *prima facie,* he would not arrest any person. When the officer presents a person before the magistrate, the magistrate alone would analyse. If the magistrate finds that there is no *prima facie* case against him, then, definitely he is going to be released, after hearing the Public Prosecutor. If he also comes to the conclusion that there is a *prima facie* case against the person, then, there is no grant of bail to him. That is the differrnce.

Another aspect of the matter is, in this Bill, there is no time-limit fixed for the disposal of cases. What is the time-limit that is fixed for the disposal of cases? Is it four years, or, two years, or, one year? In such circumstances, I would like to say, if a *prima facie* case is made out against
a person, please make provisions for a time-bound disposal of the case. If bail is not granted within a particular period, the case should be disposed of within six months or one year. For obvious reasons, after the adjudication of the case, at the time of evidence, if a *prima facie* case is not made out, if he is acquitted in the case, how are you going to compensate him? You cannot take in the officer because the judge has also upheld a *prima facie* case while rejecting the bail application. That is why I submit that in order to dispose this type of cases, A court is to be established and equipped with all the requirements for speedy disposal of the cases. Sir, a time-bound disposal of cases is very much required tn order to curtail money laundering. Otherwise, no purpose will be served. With these observations, I welcome this Bit!. Thank you.

SHRI N.K. PREMACHANDRAN (Kerala): Sir, I thank you very much for giving me this opportunity to speak on this Bill. First of all, I would like to welcome this Bill and take this opportunity to congratulate the hon. Minister of Finance for moving this Bill in this House. Originally, this Bill was passed by the Lok Sabha after its scrutiny by the Parliament Standing Committee on Finance. Subsequently, the Bill was brought before this House and it was referred to the Select Committee for its observations. Sir, I would like to submit here that the Select Committee has suggested so many amendments which, according to me, have diluted the provisions of the original Bill. The power and authority of the Bill have been diluted by the observations and recommendations of the Select Committee. Sir, it has already been stated in this House that the original Bill was introduced long back in order to fulfil an international obligation in view of the political declaration of the UN General Assembly. We have to abide by the political declaration as a part of an international commitment or obligation. That is

why we are supposed to pass this Bill. But the question is whether there is any sincere attempt to prevent money laundering. That is main question to be considered especially in the context of the present political scenario. A mention has been made of the attack on our Parliament and the September 11 attack in America. The terrorist forces are getting strengthened throughout the world especially in Indla, India is a target of these terrorist forces. The catalyst of this terrorism, is this black money or the dirty money or the money laundering. It is playing a vital role in bringing up and helping terrorists' activities. That catalyst has to be checked. Not only that, this disproportionate accumulation of wealth is really a problem for this country. The NPAs, non-payment of taxes and revenue are getting higher and higher. We are not able to check this corruption. We are not able to check those tax evasions and other liabilities also. So, at this juncture, in the light of all these things we have to discuss the Prevention of Money Laundering Bill.

Sir, as far as this Bill is concerned, my first point is regarding the definition itself. Clause 3 of the original Bill is very specific, clear and unambiguous. But after the proposed amendments of the Select committee, clause 3 of .the present Bill has become ambiguous. It has come to the light of the House that it is quite ambiguous. Clause 3 of the original Bill specifically says, 'whoever -(a) acquires, owns, possesses or transfers any proceeds of crime; or (b) knowingly enters into any transaction which is related to proceeds of crime either directly or indirectly; or (c) conceals or aids in the concealment of the proceeds of crime, commits the offence of money-laundering.' It is very clear, very specific and crystal-clear. Now, when we see the clause again after the proposed amendments of the Select Committee, we find it is not ambiguous. It say, 'whoever - (a) acquires, owns, possesses or transfers any proceeds of crime; or (b) knowingly enters into any transaction which is related to proceeds or crime either directly or indirectly; or (c) conceals or aids in the concealment of the proceeds of that crime, commits the offence of money laundering.' That means the main ingredient of the crime under clause 3 is, "not only involved or attempted or indulged in the activity.' But there is also one more ingredient and that ingredient is, he has to project it as untainted money. So, in order to constitute a crime of money-laundering, the main ingredient is that one has to project it as 'untainted money.[1] What is the meaning of 'untainted money?' Is there any definition for this in the present Bill? No. There is no definition in the Bill for 'untainted money.' How will it be interpreted? I have gone through the Bill but there is no definition for 'untainted money.' This 'untainted money' is not there in the original Bill. It

has been incorporated now. I would like to seek a ^clarification from the hon. Finance Minister as to what is the meaning of 'untainted money?' So, it is ambiguous, it is unclear and the clause is not clear. This is my point as far as definition of 'untainted money' is concerned.

My second point is this. Clause 3 deals with the offence of money-laundering. What is the offence of money-laundering? Now, I come to Sub-clause i(y) of clause 2 which deals with 'scheduled offence.' What is the meaning of 'scheduled offence?' The clause says, "the offences specified under Part B of the Schedule, if the total value involved in such offences is thirty lakh rupees or more." This is also a new provision which has been incorporated. This is also as per the recommendation of the Select Committee. If the proposed recommendation is accepted by this House, the scope of this legislation is gone. This is to prevent money-laundering. If you are committing a crime of money-laundering and if it is in connection with the offences, which have been described in Part B of the Schedule, then the money which has to be involved in that is Rs. 30 lakhs or more. Here, I would like to give you an example. I draw the attention of the hon. Finance Minister. Of course, Mr. Vijaya Raghavan has also mentioned it. Sir, in Kerala, Rs. 337 crores have come through Hawala channels. Now, what is the stage of investigation? It has come to the State through various banks. Sir, five banks are involved in this. It has also appeared in the Press. Each transaction consists of Rs. 10 lakhs, Rs. 15 lakhs and Rs. 20 lakhs. That means if each transaction is not more than Rs. 30 lakhs, Part B of the Schedule is not attracted. That is the position. So, the scope of the proposed legislation or the Aims and Objectives of the proposed Bill are defeated. And if you want to prevent money-laundering, sub-clause I(y) of clause 2 stands as a hurdle and is giving an opportunity or loophole so that a crime can be committed very easily by using this subclause. So, I would like to'draw the attention of the hon. Minister to this and would like to seek a clarification whether any investigation is going on, on the Hawala case which I had mentioned just now. And, if that is the case, I would like to Know from the hon. Finance Minister as to what is the stage of the investigation

THE VICE-CHAIRMAN (SHRI RAMA SHANKER KAUSHIK): Please conclude.

SHRI N.K. PREMACHANDRAN: Yes, Sir. I am concluding. Coming to the implementation of this, I would say that it is a good legislation. Though there are amendments, we are supporting it. We are welcoming it.

At least, this piece of legislation, I hope, will curtail, prevent or check corruption, Hawala transactions and also stop inflow of black money or dirty money that is coming into our country. It is not only affecting the economy of our country but it is also affecting the stability and' integrity of the country. And. the launderers are endangering even the communal harmony and our peaceful co-existence by using Hawala money and black money. Therefore, this Bill has to be accepted in totality. And, I would like to submit before the Government that this Bill has to be implemented in a proper way. It has to be implemented with an iron hand, only then we can check corruption and black money.

With these words, I conclude my speech. Thank you.

SHRI FALI S. NARIMAN (Nominated): Mr. Vice-Chairman, Sir, a large number of hon. Members have raised voices with regard to the harshness of the provisions of the Bill.

Sir, I support the Bill in general. And. I think, this Bill is, perhaps, less harsh than the British Money-Laundering Act. You look at the British Money-Laundering Act. Yesterday, I read an article in the *London Times* which says that the reporting duty, even of lawyers for the proceeds of drugs, applies to all crimes and because the solicitor did not report, a fee of 70 thousand Pounds or whatever he received, which happened to be from the proceeds of crime, he was liable to be hauled up. Now, fortunately the Select Committee, after taking the evidence of the Mr. Vitthal, which is recorded at page 68 of the Book, which has nicely been circulated, mentions quite clearly that the word 'knowingly' has been added in section 3; and, therefore, there is sufficient protection. But what worries me is the burden ot proof, that is, section 24. I would, most respectfully, like to suggest that Mr, Vitthal's suggestion, that the threshold limit should be Rs.1 crore or more, is a very good suggestion. It could be done without any amendment in the implementation of directions given under section 52 by the Central Government. It would be perfectly workable. We do not want harassment of individuals. The second thing that was said -- that's is why I wish to make a major comment - that harsh laws are capable of being abused. Of course, they are. Definitely, they are. One of the harshest laws that we passed in the Joint Session is said to be capable of being abused, and is said to have been abused. The question is mute one -- whether it was or it was not? But the point is, what should one do in such circumstances. This is where, I would like to say that one thing we should have done when the POTA was passed, namely, we should have

adopted some form of resolution with regard to such harsh laws of having a grievance cell within the General Purposes Committee of the Rajya Sabha. We have a General Purposes Committee, which is undefined. I would like to suggest that there must be some ventilation. Some remedy should be provided, and we are the persons who can provide that remedy. We have an institution. We have a Committee of General Purposes, where anything could be referred to. It may be that we may get a large number of complaints that such and such thing is politically motivated. But, then, there will be inputs from political parties. Therefore, I would like to suggest that this is one way in which one could mitigate the alleged harshness of a law or the harshness of its implementation. Harsh laws, there are. It is 'how you implement them' that makes all the difference. Therefore, there must be some form of remedy. I would like to suggest that we could have, not in this way, as a form of a general resolution, or perhaps take up with the General Purposes Committee that we could have a grievances cell, which would suggest that in these harsh laws there has been this position. I have been in jail for a long period because I belonged to such and such political party in such and such State. That is my respectful suggestion. I say this because I still recall what Mr. Swaran Singh sard. He was the Chairman of a Committee to abolish Article 226 of the Constitution in the days of the Emergency. And, it was he who saved article 226 by saying, "No, I was a Minister in the Punjab. I know how difficult that individual wrongs can never be righted. It should be left to court. Leave article 226," But, Sir, here is not the question of article 226. Article 226 is regarding the constitutional remedy, which may or may not force, may or may not interefere. A man, meanwhile, may be in jail. If there is any such incidence -- it may be one in hundred, it may be one in five hundred -- but if there is a fear expressed all round in this House, which is there, there may be a politically motivated prosecution by some State or by somebody or the other. There must be a remedy. I suggest that we, as the elders of this country, ought to find that remedy. Thank you.

SHRI RAM JETHMALANI (Maharashtra): Sir, while I support the Bill, I must point out that section *3 of the Act is a typical example of bad draftsmanship, and what draftsmanship should not be like. Section 3 seeks to punish a conscious attempt to show that property, which is the proceeds of crime, is not the proceeds of crime. Therefore, could not this offence be described in a very simple language, that whoever deals with the proceeds of crime in a calculated and intentional manner -- to show that it is not the proceeds of crime — will be guilty of an offence? Then, any other person

may be guilty of abetment, may be guilty of conspiracy, and may be guilty of any form of abetment. So, Sir, clause 3 is likely to create a lot of problems.

Then, Sir, I come to clause 24. It is an absurd provision. It is absolutely an absurd provision. When you seek to draw a presumption, what you do is that, a larger fact or more than one fact is held to be proved, on proof of a smaller fact or one of two or more facts. I can give you an illustration. Supposing a person is found in possession of a stolen property, soon after the theft. The presumption may be that he is either the thief or a conscious receiver of the stolen property. So, from the mere fact that he possesse the property, a further fact is presumed, and the burden then shifts on him to disprove those facts, Clause 24 has this kind of an absurdity. When a person is accused of having committed an offence under clause 3, the burden of proving that the proceeds of crime are untainted property shall be on the accused. The presumption is not arising from, at least, some fact having been proved. Merely because you accuse somebody, he has to prove it. Therefore, please understand that this presumption is totally unreasonable, irrational, and will create a lot of problems. It will not stand the test of constitutional validity at all.

Then, Sir, I come to clause 70. It has become a habit in every statute a provision, corresponding to clause 70, is, unthinkingly and irrationally, being introduced. Clause 70 says; 'when the offence under this Act is committed by a company..'. Now an offence which involves *mens rea,* knowledge, guilty, intention, so on and so forth, first of all, normally, can never be committed by a company. It can be committed by a company, provided some individual has that requisite guilt, knowledge or intention. Therefore, before you accuse a company, you have to find out what the authorities say, who is the directing will and mind of that company, who is the person who is in control of that company, and who takes responsible decisions in that company. Then, you must determine that he is guilty of an offence. Then, you prosecute the company. Therefore, if you have already to determine the person, for the purpose of finding the company liable, then, it is absolutely useless to say that the company should also be prosecuted. But, Sir, companies are sometimes prosecuted because companies have lot of property, and the individual may not have any property. So, you can recover large funds from these companies. Unfortunately, what has been forgotten by the draftsmen of this statute is that, under clause 3 -- which deals with the offence you are really

concerned about -- the punishment is not 'and fine', but it is ' imprisonment and fine'. Now, once an offence is punishable with imprisonment and fine, the law is absolutely settled, that a company can never be prosecuted, because you cannot send a company to jail. Therefore, Sir, clause 70 is redundant, and the draftsmen of these statues did not realise what kind of problems have been created both in England and in India, as a result of this kind of a provision. This provision does not make any sense; delete it. In spite of the absence of this provision, this law wil! make a good law.

THE MINISTER OF FINANCE (SHRI JASWANT SINGH): Mr. Vice Chairman, Sir, I am grateful to all the hon. Members who have contributed so valuably to this discussion and deliberation. This legislation has had a very long gestation period. It has been in the process of being worked out since 1998. I don't wish to repeat the history of this legislation. It was introduced in the Twelfth Lok Sabha, in 1998. The Standing Committee on Finance deliberated on it. The hon. Member from Manhattan was then the Chairman of the Committee on Finance. Thereafter, it has had a very long journey, Then, it came to Rajya Sabha. Rajya Sabha, in its wisdom, decided to entrust it to the Select Committee. The Select Committee submitted its report on this piece of legislation. What I am attempting to persuade the House is to agree to what the Select Committee of Rajya Sabha has reported to Parliament. In parliamentary terms, when a Select Committee submits its report, it makes some recommendations. Indeed, the Select Committee did draft this Bill. Thereafter, of course, dutifully, I sent it to the Ministry of Law. I am ready to accept that there are some deficiencies in the drafting, with the result, as against clarity, there could, in fact, be obscurity, We can have difficulties tn its implementation. Broadly, two kinds of observations have been made with regard to this piece of legislation. As per one observation, this Bill is too harsh; and the other observation is, we need to bring a legislation which is even more harsh. I think the Select Committee steered a middle course. Let me share with the hon. Members what the thinking of the Government in this regard is. We are not reinventing FERA, under a different guise. I am not entrusted with the responsibility of acting as a policeman of the country or acting as a policeman on the economic morals of the country. I am entrusted with the responsibility of judiciously and properly managing the foreign exchange of the country, which we are endeavouring to do, to the best of ouf ability. It is not my intention, nor is it the intention of the Government, to have a piece of legislation which can be used as a kind of a disguise for political vendetta or political revenge-taking. Far from it, the Ministry of Finance

would not indulge in any such activity. Broadly speaking, Sir, the time is already fairly far beyond the time allotted for discussion on this important piece of legislation. We have exceeded the time limit, but I am quite ready to accept it. Apprehensions have been expressed about misuse of these provisions. After long deliberations by the Standing Committee and the Select Committee, we have come to this stage, Despite that, if hon. Members have apprehensions about its misuse, I am ready-- indeed duty-bound -- to address myself to those apprehensions. I do not want to go into all the details of the apprehensions that have been voiced here - about the Schedule, Part A and Part B. Difficulties do come in piloting a Bill of this nature. A very eminent lawyer, my distinguished friend and colleague, Shri Ram Jethmalani, is present here. An eminent jurist, Mr. Nariman, is also present. Mr. Kapil Sibal, who spoke earlier, is not there. I do not intend to— I have net done so earlier, and will not, in future, as well - discuss this issue, as a lawyer. We are a law-making body, but we are not a court of law. Therefore, whereas I would address myself to all the legal issues that hon. Members have raised here; the Ministry would also address them. I will not attempt to rebut and answer the very fine legal points which both of my friends, Shri Ram Jethmalani and Mr. Nariman, have made. In broad terms, the issues arise from the selective application, the possibility of misuse. रामगोपाल जी इस समय नही हैं, उन्होने सैंक्शन फ़ॉर प्रोसीक्यूशन के बारे में, बर्डन ऑफ़ प्रूफ़, बेल इत्यादि के बारे मे सही बात कही है। वे सभी मसले, जिन मसलों पर उन्होने अपनी उंगली रखी, वे सही मसले है I Mr. Kapil Sibal has also referred to an issue about the definition of 'public servant'. That, Sir, is not in my hand. The definition of 'public servant' has now been pronounced upon by the Supreme Court. The hon. Members of this House, as also of the other House, are, of course, entirely free to re-address this question, and when they do so, all these sentiments and viewpoints can be expressed by myself, but as Government, we cannot re-address or re-open this issue ourselves. Sir, the question regarding the limit in Part B has been raised. It has been voiced by a number of Members that it should be increased from Rs. 30 lakhs to Rs.1 crore. I also am of the view that this, perhaps, does not require any amendment to the legislation; certainly, we can address this question jointly when we come to the framing of the rules. Therefore, I commend this Bill to the House and do request the House to pass this Bill. From here, it will travel back to the Lok Sabha, because it is now an amended Bill, as passed by the Lok Sabha, and the Lok Sabha will again deliberate over it. Therefore, I am quite ready, - in fact, I am willing, Sir, -to give two further assurances, and make one suggestion, though, my

esteemed colleague, the Leader of the Opposition, is currently not here. I assure the hon. Members that between now and the Winter Session of Parliament, such difficulties, anomalies, shortcomings, as have been pointed out by a number of Members, despite this long gestation period of the Bill; the Government shall address itself to those anomalies, and I will bring the necessary amendments to the legislation in the Winter Session itself. As for framing of the rules, I would say *...(Interruptions)...*

DR. T. SUBBARAMI REDDY: Sir, I want to know about the framing of the rules,

SHRI JASWANT SINGH: Sir, I am coming to that. As far as the framing of the rules is concerned, 1 would say that, after the legislation is enacted, it has first go to the Lok Sabha, and once it is passed by the Lok Sabha, it would go for the Presidential assent. I would be very happy if the Leader of the Opposition, in his own right, without involving us - I cannot form a committee for this purpose. It is an Executive function; it is my responsibility — were to appoint two or three hon. Members, from whichever side of the House that he chooses, to sit with us and consult with us in the formulation of the rules. I would have no difficulty whatsoever in doing so. And, I am ready to do that. *...interruptions)...*

SHRI N. JOTHI: Sir, the Members should be from each recognised party. .. *.(Interruptions)...*

SHRI JASWANT SINGH: Sir, I am very sorry. I*drd say. I cannot constitute a committee all over again. I do leave it to the discretion and judgement of the Leader of the Opposition. Whoever he wishes to recommend that they be associated with the Executive and the Government in the formulation of the rules, I would have no difficulty whatsoever in doing so. This is an important piece of legislation. We need to have such a legislation. I do not compare it with similar legislations in other parts of the world, but I do reassure what hon. Fali Nariman has said, that if we were to compare it with the British legislation on the same subject, then this is a very timid piece of legislation. This is not to say what the British are doing, but we need not treat every piece of legislation, as if the intent is bad. I am ready to accept that in application, a number of laws have been misused. Let us try to make a departure from it. I request and invite the Leader of the Opposition to help us in framing the rules through whatever method he decides.

Sir, I have nothing more to say on this. I commend the Bill to the House,

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**): अब मैं प्रस्ताव कर रहा हूँ । प्रस्ताव यह है:

" कि धन शोधन निवारण और धन शोधन से व्युत्पन्न या उस में अन्तर्वलित सम्पत्ति के अधिकरण और उस से संसक्त या उस के आनुषंगिक विषयों का उपबंध करने वाले विधेयक पर, प्रवर समिति द्वारा प्रतिवेदित रुप में विचार किया जाए"

प्रस्ताव स्वीकृत हुआ।

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**): अब हम धारावार विचार करेंगे। धारा -2 इस में एक संशोधन है। श्री ए. विजय राघवन।

Clause 2 - (Definitions)

SHRI A. VIJAYA RAGHAVAN (Kerala): Sir, I move:

3. "That at page 25, line 21, *for* the words "thirty lakh" the words "ten lakh" be *substituted.*

संशोधन संख्या -3 **अस्वीकृत हुआ।**
धारा -2 **विधेयक का अंग बनी।**

उपसभाध्यक्ष :धारा -3, इस में एक संशोधन है। श्री ए. विजय राघवन।

Clause 3 (offence of money laundering.)

SHRI A. VIJAYA RAGHAVAN: Sir, I move:

4. That at page 25, *for* lines 35-38, the following be *substituted,* namely:-

"3. Whoever -

acquires, owns, possesses or transfers any proceeds of crime, or

knowingly enters into any transaction which is related to proceeds of crime either directly or indirectly; or

conceals or aids in the concealment of the proceeds of crime, commits the offence of money-laundering.

संशोधन संख्या -4 **अस्वीकृत हुआ।**
धारा-3 **विधेयक का अंग बनी।**

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**): धारा -4, इस में चार संशोधन हैं।

DR. T. SUBBARAMI REDDY: Sir, I am not moving my amendments. I would only request the hon. Minister to examine it suitably.

धारा -4 **विधेयक का अंग बनी।**

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**): धारा-5, इस में एक संशोधन है। श्री ए. विजय राघवन।

Clause 5 (Amendment of property involved in money-laundering)

SHRI A. VIJAYA RAGHAVAN: Sir. I move:

9. That at page 26, lines 4-5, the bracket and words "(the reason for such belief to be recorded in writing), on the basis of material in his possession" be *deleted.*

Sir, I have a small point to make. When the hon. Finance Minister was giving his reply, he said that it has to be diluted. He said that the dilution will be after consultation with the-Opposition. That is to be ensured. We have just raised a voice of dissent." That also should be heard in a Parliamentary democracy. It should not be a matter only between these two sides.

SHRI JASWANT SINGH: Sir, it is very irregular. What I am doing just now in responding to the hon. Members amendment is actually very irregular because it is not a procedure of the debate. Firstly, it is the Leader of the Opposition that I have made this offer to, not just a Party leader. He is the Leader of the Opposition. Secondly, the rules are laid on the Table of the House. They are not debated in the House.

संशोधन संख्या 9 **अस्वीकृत हुआ।**

धारा 5 **विधेयक का अंग बनी।**

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**): धारा 6, इसमें पांच संशोधन है। एक संशोधन माननीय मंत्री जी का है और चार संशोधन डा. टी. सुब्बा रेड्डी जी के हैं।

Clause 6 (Adjudicating Authorities, composition, powers, etc.)

DR. T. SUBBARAMI REDDY: I am not moving my amendments

because he has agreed to formulate the rules with tne Opposition Leader,

SHRI JASWANT SINGH: Sir. I move:

10. That at pages 26-27, *for* sub-clauses (2) and (3), the following be *substituted,* namely:-

"(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority:--

in the field of law. unless he-

is qualified for appointment as District Judge; or

has been a member of the Indian Legal Service and has held a post in Grade I of that service;

in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed."

प्रस्ताव पर मत लिया गया और पारित हुआ।
धारा 6 यथा संशोधन विधेयक का अंग बनी।
धारा 7 से 18 विधेयक का अंग बनीं।

उपसभाध्यक्ष (श्री रमा शंकर कौशिक):धारा 19, इसमें एक संशोधन है।

Clause 19 (Power to arrest)

SHRI A. VIJAYA RAGHAVAN: Sir. I move:

15. That at page 33, lines 35-37, the words and bracket "has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing)" be *deleted.*

संशोधन संख्या 15 अस्वीकृत हुआ।
धारा 19 विधेयक का अंग बनी।
धारा 20 से 25 विधेयक का अंग बनीं।

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): धारा 26, इसमें दो संशोधन हैं।

DR. SUBBARAMI REDDY: Sir, I am not moving my amendments.

धारा 26 विधेयक का अंग बनी।

धारा 27 **से** 63 **विधेयक के अंग बनीं।**

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**): धारा 64 में संशोधन है।

CLAUSE - 64- COGNIZANCE OF OFFENCES

SHRI JASWANT SINGH: Sir. I move:

18. That at page 23, proviso to sub-clause (2) be *deleted,*

धारा 64, **यथा संशोधित, विधेयक का अंग बनी**
धारा 65 **से** 69 **विधेयक का अंग बनी**
अनुसूची विधेयक का अंग बनी

उपसभाध्यक्ष:धारा 70 में एक संशोधन है।

CLAUSE 70--OFFENCES BY COMPANIES

SHRI A. VIJAYA RAGHAVAN: Sir. I move:

19. That at page 46, line 36. *after* the word "contravention" the words figure and letter "and falsification of accounts as per section 177 A of the Indian Penal Code" be *inserted.*

संशोधन संख्या 19 **अस्वीकृत हुआ**
धारा 70 **विधेयक का अंग बनी**
धारा 71 **और** 72 **विधेयक का अंग बनी**

उपसभाध्यक्ष: धारा 73, इसमें मंत्री जी का एक संशोधन है।

CLAUSE 73- POWER TO MAKE RULES

SHRI JASWANT SINGH: Sir. I move:

20. That at page 25, line 41, the words "proviso to" be *deleted.*

प्रस्ताव पर मत लिया गया और पारित हुआ
धारा 73, **यथा संशोधित, विधेयक का अंग बनी**
धारा 74 **और** 75 **विधेयक का अंग बनी**
अनुसूची विधेयक का अंग बनी

उपसभाध्यक्ष (**श्री रमा शंकर कौ शिक**) : धारा 1, इसमें मंत्री जी का एक संशोधन है ।

CLAUSE 1- SHORT TITLE, EXTENT AND COMMENCEMENT

SHRI JASWANT SINGH: Sir, I move:

That at page 1, line 5, *for* the figure "2000" the figure "2002" be *substituted.*

प्रस्ताव मत लिया गया और पारित हुआ
धारा 1, यथा संशोधित, विधेयक का अंग बनी

उपसभाध्यक्ष (श्री रमा शंकर कौशिक):अधिनियम सूत्र, इसमें मंत्री जी का एक संशोधन है।

ENACTING FORMULA

SHRI JASWANT SINGH: Sir, I move:

2. That at page 1, line 1, for the word "Fifty-first" the word "Fifty-third" be *substituted.*

प्रस्ताव पर मत लिया गया और पारित हुआ
अधिनियम सूत्र, यथा संशोधित, विधेयक का अंग बना
शीर्षक विधेयक का अंग बने

SHRI JASWANT SINGH: Sir, I move:

That the Bill, as amended, be passed.

प्रस्ताव पर मत लिया गया और पारित हुआ

उपसभाध्यक्ष महोदय, इंश्योरेंस से जुड़े हुए दो बिल हैं जो अपने आप में ऐसे बिल नही हैं कि जिन पर विवाद हो। मैं आग्रह नही करता कि माननीय सदस्य आज ही उन्हें लें। यदि कल वे बिल ले लिए जाएं तो अच्छा होगा। वैसे घंटे भर की चर्चा में दोनों बिल पारित किए जा सकते हैं। मेरा निवेदन होगा कि उन्हें ले लें या फ़िर कल पास कर दें।

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): इसमें कोई कठिनाई नही है। उन्हे पहले भी लगा सकते हैं। जब प्राइवेट मेंबर बिजनैस का समय होगा, उससे पहले उन्हें लगाया जा सकता है। ये बिल कल लिए जा सकते हैं।

श्री दीपांकर मुखर्जी (पश्चिम बंगाल):सर, मंडे को करेंगे। वह देखिए पिटीशन कमेटी की चेयरमैन वहां बैठी हुई हैं,वे सब छेड़े जाएंगे। इतनी जल्दी यह बिल पास होने वाला नही हैं, यह तो हम कह सकते हैं। इंश्योरेंस का बिल इधर- उधर से पास होने वाला नही हैं। इंश्योरेंस का बिल ऐसा नही है। जहां हम लोग अपोज करते हैं, वहां ऐसा – वैसा , इधर – उधर नहीं होगा। जो होना है, यही होना है और 1995 से लेकर 2002 तक हम सबके बारे में बोल देंगे।

5.00 P.M.

श्री भारतेन्दु प्रकाश सिंहल (उत्तर प्रदेश):महोदय, राष्ट्रपति जी ने कहा था कि काल करे सो आज कर।

श्री दीपांकर मुखर्जी: याद है ना आपको ? करना ही है तो अच्छे मूड मे करेंगें। अच्छे मूड में काम हो गया, मनी लांडरिंग का बिल पास हो गया लेकिन इंश्योरेंस का बिल इतनी जल्दी पास नहीं हो सकता। यह लाईफ़ का सवाल है। इसमें बहुत सी कमियां है। वैसे हम तैयार हैं,इसमें कोई कठिनाई नही है।

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): वैसे आप सबको यह जानकारी है कि यह तय हो चुका है कि हम लोग 6 बजे तक बैठते रहेंगे।

श्री दीपांकर मुखर्जी: आज के लिए ऐसा तय हुआ है, ऐसी बात नही हैं।

उपसभाध्यक्ष (श्री रमा शंकर कौशिक):नही , आज के लिए नही, पूरे सत्र के लिए यह तय हुआ है कि हम लोग 6 बजे तक बैठते रहेंगे।

श्री दीपांकर मुखर्जी:सर, हम लोग यह बात छेड़ना नही चाहते लेकिन अगर आप छेड़ना ही चाहते हैं तो मैं यह कहूंगा कि जिन बिलों की बात लीडर ऑफ़ दि हाऊस बोल रहे हैं, उन बिलों का तो कोई मतलब ही नही है। ये ऑर्डर तो निकल गया है और उसका इंप्लीमेंटेशन हो रहा है। I We do not want to open the issue. Let us have a nice ending.मनी- वनी सब लांडर्ड हो गया। Let us finish it. If you say that it is to be discussed and passed in a hurry, then I would say that this Bill has got nothing, the Insurance Bill has got no meaning; it is just putting the stamp. it is already under execution. There is an Order. So, let us not bring those issues.

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): दीपांकर जी, संसदीय कार्य मंत्री कुछ सुझाव देना चाहते हैं।

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION (SHRI O. RAJAGOPAL): Sir. we have taken a decision that we will sit up to 6 o'clock. Let us start the discussion, and it can be concluded on some other day.

SHRI DIPANKAR MUKHERJEE: Sir, has it been decided in the Business Advisory Committee that the House will sit up to 6 o'clock? The other day, last Friday, since there was no Government Business in the House, the House had to be adjourned at 12.50! Is it that the Government will extend the House up to 6 o'clock, as and when they want? If they have business, they would like us to sit up to 6 o'clock. If they have no business, they would adjourn early! Last Friday, the House had to be

adjourned at 12.50- Today, if we are making a request, they don't want to adjourn! Let us know whether the Business Advisory Committee has decided. If it is so, then from today onwards, we will sit up to 6 o'clock.

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**):यह तो तय हुआ है कि इस सत्र में 6 बजे तक हम लोग बैठते रहेंगे।

श्री दीपांकर मुखर्जी: इस सत्र में कैसे ? जब पिछले शुक्रवार को कोई गवर्नमेंट बिजनेस नही था तो सवा बारह बजे हाऊस ऍडजॉर्न हो गया था। कोई जल्दी नही है।

THE MINISTER OF PARLIAMENTARY AFFAIRS AND INFORMATION TECHNOLOGY (SHRI PRAMOD MAHAJAN: Sir, the Business Advisory Committee, in its last sitting, decided that the House would sit up to 6 o'clock and beyond. It is already communicated to the hon. House.

उपसभाध्यक्ष (**श्री रमा शंकर कौशिक**): जी हां, वह मैंने बताया है। आप लोग पार्लियामेंटरी अफ़ेयर्स मिनिस्टर से बात कर लिजिए।

श्री नीलोत्पल बसु: इन्होनें कहा है कि जनरली हम लोग 6 बजे तक बैठेंगे लेकिन हम लोग जो टाइम तय करते हैं, प्वाइंट यह है कि सरकार जो बिल पास करवाना चाहती है, उसके लिए पूरा टाइम होगा या नहीं? हम पार्लियामेंटरी अफ़ेयर्स मिनिस्टर को आश्वस्त करना चाहते हैं कि यह बिल पास हो जाएगा । सवाल है कि यह आज होगा या मंडे को होगा। मंडे को कराइए साहब, यह अभी आधा अधूरा छूट जाएगा। उस दिन इंश्योरेंस के दोनों बिल हो जाएंगे।

उपसभाध्यक्ष (**श्री रमा शंकर कौ शिक**):अब सदन की कार्रवाई कल दिनांक 26.7. 2002 पूर्वान्ह 11 बजे तक के लिए स्थगित की जाती है।

The House then adjourned at one minute past five of the clock till eleven of the clock on Friday, the 26^{lh} July, 2002.